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Center for Medicaid, CHIP and Survey & Certification

CMCS Informational Bulletin

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SUBJECT: Recent Developments in Medicaid and CHIP Policy

This Informational Bulletin is to provide you a summary of recent activities and guidance to the States over the past several weeks. CMS has published two final regulations that affect State Medicaid and CHIP programs – the HITECH and PERM final rules -- and released five policy and operational guidance letters to State Medicaid and CHIP Directors. In addition, we provided information regarding the extension of the increase in the Medicaid Federal Medical Assistance Percentage (FMAP) that was recently enacted. A description of each item is below:

- **Extending Hospice Care for Children.** Released on September 9, 2010, this letter provides guidance to States on the implementation of section 2302 of the Affordable Care Act, entitled "Concurrent Care for Children." Section 2302 amends sections 1905(o)(1) and 2110(a)(23) of the Social Security Act to assure that children can receive curative treatment upon the election of the hospice benefit for children enrolled in Medicaid or CHIP.

  Hospice services are an optional benefit under Medicaid for adults, but are a required service under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) provision for children. This rule also applies to CHIP programs administered as Medicaid expansions. In separate CHIP programs, hospice care is an optional service. In order to qualify for the hospice service in either Medicaid or CHIP, a physician must certify that the eligible person is within the last 6 months of life.

  The Affordable Care Act does not change the criteria for receiving hospice services, but by making these new services available to families, this new provision ensures that children will receive hospice services, such as pain and symptom management and family counseling provided by specially-trained hospice staff, without forgoing any other service covered by Medicaid or CHIP for treatment of the terminal condition. This change will improve access to hospice services and supports for children and their families without having to forgo curative treatment.

- **Connecting Kids to Coverage Challenge.** On September 3, 2010 Secretary Sebelius and Secretary of Education, Arne Duncan formally launched the "Connecting Kids to Coverage Challenge" in an event in Washington, DC that also featured the release of a new report by the Urban Institute in the journal *Health Affairs*. The article can be accessed at http://content.healthaffairs.org/cgi/reprint/hlthaff.2010.0747v2. The report includes new State-by-State estimates of Medicaid and CHIP participation rates among eligible children and data regarding the number of children nationally that are eligible but are not enrolled. The HHS InsureKidsNow website includes a State-by-State map that details each State's participation rate -- see http://www.insurekidsnow.gov/facts/index.html.

  In addition, *Health Affairs* released a Commentary by Secretary Sebelius discussing the Challenge and several strategies States and community organizations can pursue to further promote children's coverage. The Commentary is available at http://content.healthaffairs.org/cgi/reprint/hlthaff.2010.0852v1

  Finally, the event also featured three videos highlighting activities that have taken place over the past several weeks in Rhode Island, Oregon and Iowa. The videos are available on the HHS Insure Kids Now website at http://www.insurekidsnow.gov/professionals/campaigns/Connecting%20Kids%20Challenge/organizations.html#videos

  States and other partners that want to learn more about the Challenge may contact Donna Cohen Ross at donna.cohenross@cms.hhs.gov or (202) 260-0509.

- **Change in Average Manufacturer Price Definition.** On September 3, 2010, CMS published *The Medicaid Program: Withdrawal of Determination of Average Manufacturer Price, Multiple Source Drug Definition, and Upper Limits for Multiple Source Drugs (CMS-2238-P2).* The regulation text is available on the Federal Register's Website at: http://edocket.access.gpo.gov/2010/pdf/2010-22115.pdf

- **National Correct Coding Initiative**. On September 1, 2010 we issued the first in a series of guidance on section 6507 of the Affordable Care Act, regarding the mandatory State use of the National Correct Coding Initiative (NCCI). NCCI is a tool to help States guard against improper payment of claims. The Affordable Care Act required CMS to take specific action by September 1, 2010 to: 1) notify States of NCCI methodologies that are "compatible" with claims filed with Medicaid; 2) notify States of the NCCI methodologies that should be incorporated for claims filed with Medicaid for which no national correct coding methodology has been established for Medicare; and 3) inform States as to how they must incorporate these methodologies for Medicaid claims filed on or after October 1, 2010.

In this guidance CMS advised States that five NCCI methodologies currently in place in Medicare are compatible methodologies for claims filed in Medicaid. States are now able to begin the process of editing claims against NCCI methodologies, promote correct coding, protect against improper coding, work to reduce the payment error rate, and potentially accrue savings for Medicaid programs nationwide. The letter can be accessed at http://www.cms.gov/smdl/downloads/SMD10017.pdf

- **PERM Final Rule –** On August 11, 2010, CMS issued the final regulation to fully implement improvements to the Payment Error Rate Measurement (PERM) program for Medicaid and the Children's Health Insurance Program (CHIP) (75 FR 48816). The final regulation implements changes to the PERM program required by the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 and makes other operational changes to the PERM program based on stakeholder feedback. The rule changes the process for reviewing cases in which States have used simplified enrollment efforts such as self-declaration of income; eliminates duplication of effort between the Medicaid Eligibility Quality Control (MEQC) eligibility reviews and PERM eligibility reviews when a State is included in the PERM cycle; extends the timeframe for providers to submit documentation; and provides States additional time to submit corrective action plans. The regulation can be accessed at: http://www.gpo.gov/fdsys/pkg/FR-2010-08-11/pdf/2010-18582.pdf

- **PERM Guidance –** On August 20, CMS announced the release of two letters regarding operational changes to the Payment Error Rate Measurement (PERM) program The first letter addressed changes to PERM that were included in the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009. Under Section 601 of CHIPRA, States measured for fiscal year (FY) 2007 or FY 2008 may elect to accept any CHIP PERM error rate determined in whole or in part for the State on the basis of data for the fiscal year for which they were measured (FY 2007 or FY 2008) as their base year. In addition, they may elect to consider the CHIP PERM measurement conducted for FY 2010 or FY 2011 as the first FY for which PERM applies to the State.

  The second letter, also released on August 20, provides operational guidance addressing two of five findings from the HHS Office of the Inspector General Medicaid PERM audits for FYs 2006 and 2007. The two audit findings address: (1) information security requirements; and (2) re-pricing claims. The letter also provides guidance regarding a third finding relating to reconciliation of State universe data to CMS' financial report. This reconciliation process is also addressed in the PERM final regulations referenced above.

- **FMAP Extension.** On August 18, CMCS released a set of guidance materials related to the passage of the Education, Jobs and Medicaid Assistance Act (P.L. 111-226) which was signed into law on August 10, 2010. Among other things, the legislation extends the increased Medicaid Federal medical assistance percentage (FMAP) under Section 5001 of ARRA through June 30, 2011. **As a condition of receiving these additional Federal funds for the extension period of January 1, 2011 through June 30, 2011, the Chief**

Executive Officer of the State must submit a request for those funds within 45 days of enactment, or by September 24, 2010.

We released a letter template that Governors may use in making their request for these funds and urge States to submit this letter as soon as possible to ensure that the certification is received in advance of the September deadline. All of the materials can be accessed at: http://www.cms.gov/apps/docs/08-18-10-cmcs-informational-bulletin-FMAP-Extension-Guidance.pdf

- **HITECH Guidance.** Released on August 17, 2010, this letter provides extensive guidance to State Medicaid agencies regarding use of the 90/10 administrative matching funds for the implementation of section 4201 of the American Recovery and Reinvestment Act (ARRA) of 2009. It follows the issuance of the final regulations in July at 42 CFR Part 495, Subpart D which allow the payment of incentives to eligible professionals (EPs) and eligible hospitals to promote the adoption and meaningful use of certified electronic health record (EHR) technology.

  The Recovery Act provides 100 percent Federal financial participation (FFP) to States for incentive payments to eligible Medicaid providers to adopt, implement, upgrade, and meaningfully use certified EHR technology, and 90 percent FFP for State administrative expenses related to the program. In order to qualify for the 90 percent FFP administrative match, a State must, at a minimum, demonstrate to the satisfaction of the Secretary compliance with requirements related to Administration, Oversight, and encouraging adoption of HER technologies. This letter and the accompanying enclosures provided more detailed guidance about CMS's expectations relating to the activities and potential uses of the 90/10 matching funds. The letter is available at http://www.cms.gov/smdl/downloads/SMD10016.pdf

I hope you will find this information helpful. Thank you for your continued commitment to the success of these critical health coverage programs.

Cindy Mann