

DC Update

March 14, 2008

The House and Senate passed FY 2009 budget resolutions this week. Both include more funding for domestic spending programs than requested in the President's budget proposal. More details are below. Congress will recess for two weeks and return to continue appropriations, the next step in the budget process.

Fiscal Year 2009 Budget

The House and Senate passed their respective FY 2009 budget resolutions this week. Each \$3.1 trillion budget blueprint is a non-binding plan that sets guidelines for federal spending in the next fiscal year and sets forth the Democrats' priorities for the next five years. Of note, both budget resolutions include a deficit - neutral reserve fund that allows Congress flexibility to pass legislation this year that would delay Medicaid regulations.

Next, appropriators will determine allocation amounts for specific programs. NACBHDD will be working with Congress and other advocates to express funding priorities for programs of interest.

Medicaid

NACBHDD participated in a discussion and call with CMS aimed at providing clarification for the case management/targeted case management services regulation. The interim final rule was effective on March 3, 2008 and states continue to seek assistance to comply with the rule. The following are few clarifications:

- ACT teams will not need to tease out case management. Case management will not need to be billed in 15 minute increments, as outlined for other case management services in the published regulation. It is expected that the ACT will be considered the single case manager for the beneficiary.
- A delay for compliance is in place to allow states and localities time to implement procedures to ensure beneficiaries only have one case manager.
- Compliance with the rule for Home and Community based waivers is dependent upon renewal, not when an amendment is submitted.
- States can still designate specific case managers for targeted developmental disability and chronic mental illness populations.
- The single case manager provision does not apply to managed care. States can also offer case management in addition to the care coordination function that is apparent in that arrangement, but an off set to the capitated rate will need to be made.
- As for transition planning, the rule states the case management services cannot be billed until a beneficiary is discharged from institutional care and enrolled in community based services. CMS clarified that they will not get into the specificity of whether an individual

has an appointment or has already been seen by a provider to determine what “enrolled” means.

CMS encourages state associations to provide questions regarding this rule to CMS regional offices. NACBHDD will continue to participate on regularly scheduled calls with other collegial organizations addressing this and other Medicaid issues. NACBHDD encourages members to submit questions to us as well as state agencies/associations. We will keep you updated on any new legislative and/or agency activity and update members as more details become clear.

Two Lawsuits Filed to Stop Medicaid Cuts

Recently, two lawsuits have been filed asking for injunctions that prohibit the Centers for Medicare and Medicaid Services (CMS) from implementing two published regulations. On March 11, 2008, a coalition including The National Association of Public Hospitals and Health Systems (NAPH), American Hospital Association (AHA), and the Association of American Medicaid Colleges (AAMC) filed suit in the U.S. District Court for the District of Columbia asking for an injunction prohibiting CMS from implementing the limiting costs to public providers’ regulation. In coalition documents, the suit asks the court to reject the rule based on three claims:

- 1) CMS has overstepped its authority in dictating to states the governmental status of entities within their jurisdiction;
- 2) Congress has barred the agency from imposing a cost limit on Medicaid payments to governmental providers; and
- 3) CMS improperly issued the rule on the very day (May 25, 2007) that a Congressional moratorium blocking the rule took place.

The groups indicate that the rule would cut millions of dollars in Medicaid funding to hospitals and other health care providers. Currently, the rule has been stopped from going into effect through a legislative moratorium attached to the May 2007 Iraq War supplemental funding bill; however the moratorium expires May 25, 2008. Groups continue to work with Congress to seek a legislative solution in order to prevent implementation of the rule.

Four States File Medicaid Lawsuit

A second lawsuit, initiated by Maine, Maryland, New Jersey and Oklahoma, was filed in the U.S. District Court for the District of Columbia against the United States Department of Health and Human Services (HHS). The lawsuit challenges the CMS case management rule, which became effective on March 3, 2008 and asks that the rule not be implemented. The suit alleges that portions of the case management Interim Final Rule go beyond intent/scope of the 2005 Deficit Reduction Act. According to the four states, the Interim Final Rule will “jeopardize the health and safety of Medicaid beneficiaries, limit state flexibility to provide case management in the most effective and efficient manner, and result in a substantial reduction in federal funds” for case management services.

Currently, there is not a moratorium for the case management regulation. In late February, the Senate included moratorium language in the Indian Health Care Improvement Act (S 1200).

However, the House has not taken up that legislation (H.R. 1328) and it is unclear whether that chamber will address the bill. Further, the White House has indicated it would veto the legislation. NACBHDD will continue to seek a viable vehicle in which to attach a possible moratorium for the case management regulation.

Medicaid Moratoria Legislation Introduced in the House

Yesterday, bi-partisan legislation was introduced in the U.S. House of Representatives by Representatives John Dingell (D-MI) and Tim Murphy (R-PA) that would place a one year moratorium on the seven Medicaid regulations recently issued by CMS. The bill, H.R. 5613, would prohibit CMS from taking action to implement these regulations until April 2009. The list includes CMS regulations limiting Medicaid payments for: targeted case management services, rehabilitation services, school-based transportation and outreach services, governmental providers, provider taxes, and hospital outpatient services. It is expected similar legislation will be introduced in the Senate after the two week recess.

Second Chance Act Passes the Senate

On March 11, the Senate passed the Reducing Recidivism and Second Chance Act of 2007 (S. 1060) by unanimous consent. This bill, introduced by Senators Joseph Biden (D-DE), Sam Brownback (R-KS), Patrick Leahy (D-VT), and Arlen Specter (R-PA), provides critical resources designed to reduce recidivism and ensure community based services are available for individuals with mental illness and substance use disorders.

The House passed the Second Chance Act of 2007: Community Safety through Recidivism Prevention (HR 1593) by a vote of 347 to 62 on November 13, 2007. The legislation is now expected to proceed to the President's desk for signature.