



National Association of County
Behavioral Health and Developmental
Disability Directors

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DC Update

Congress adjourned for recess in early August and will return after the Labor Day holiday. Prior to leaving both chambers passed Children's Health Insurance Program (CHIP) bills. Once they return, we expect a conference of the legislation and a veto from the President.

Though no legislative activity takes place during recess, advocates have been reviewing the recently released Medicaid Rehabilitation Option proposed rule. Please find a brief analysis below. NACBHDD appreciates any questions or information you could provide. We look forward to working with you in the coming months to assess how these proposed regulations will affect the membership.

I. Medicaid Rehabilitation Option Proposed Rule

The Centers for Medicare and Medicaid Services (CMS) recently released the proposed rule for rehabilitative services. Over the coming weeks NACBHDD will be reviewing the regulations and meeting with consumer, family, provider and administrator groups to assess the impact of the guidance. Comments on the proposed regulations are due October 12, 2007. When we attain more details we will pass it along to members. For the moment, we offer the following summary.

You can view the published proposed regulations in the Federal Register at:

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-3925.pdf>

- **Written Rehabilitation Plan**

CMS has indicated that each individual will have a rehabilitation plan. This new process is to be person centered and recovery oriented. Additionally, there is emphasis on inclusion of consumers, families and others in the development of the plan. While many support this concept groups will continue to discuss the impacts of this section with providers.

- **Intrinsic Element Standard**

This provision is concerning as CMS attempts to draw the line between rehabilitation services and services that are “intrinsic elements” of other programs. If services are delivered through another “non-medical program as either a benefit or administrative activity, including programs other than Medicaid, such as foster care, child welfare, education, child care, vocational and prevocational training, housing, parole and probation, juvenile justice, or public guardianship” coverage of rehabilitation services will not be available.

In addition, the guidance states “Rehabilitation services may be covered by Medicaid if they are not the responsibility of other programs and if all applicable requirements of the Medicaid program are met. Medicaid rehabilitative services must be coordinated with, but do not include, services furnished by other programs that are focused on social or educational development goals and are available as part of other services or programs.”

While the agency does not disqualify an individual from receiving rehab services, they will only be reimbursed by Medicaid if they are not the responsibility of another program.

- **Habilitation Services**

Currently, certain states are able to cover habilitation services for individuals with developmental disabilities, under the rehab option. The Omnibus Budget Reconciliation Act of 1989 allowed this take place, however if this rule is issued in its final form, this will not be the case. Habilitation services may be covered in two ways, “when provided in an ICF/MR or when covered under 1915 (c), (d) or (i) of the Act.” The agency intends to allow for a delayed compliance for this transition period.

NACBHDD will continue to work with disability groups to assess the impact of this provision.

- **Payment Methodology**

Under the new regulation, if states provide rehabilitation services they must identify “services that will be provided, qualifications of the providers and payment methodology.” While the guidance does not specifically mention bundling or packaging of services, it would appear that this method of case/day rate or bundled approaches would be forsaken.

- **Positive Elements of the Proposed Rule**

The proposed rule cites that rehabilitative services are available to eligible individuals to address mental health and/or substance abuse related treatment needs. The proposed rule also acknowledges the goals of the New Freedom Commission on Mental Health.

- **Next Steps**

While this is a preliminary analysis, NACBDHD will continue to gather information and share any new developments. Additionally, we will work with NACBHDD members to assess impacts in localities in an effort to create comments that will be sent to CMS.

At this time, we are working with various groups to develop a strategy for legislative action. The House CHIP bill includes language for a one year moratorium; however the Senate bill does not include this provision. NACBHDD supports this process in an effort to buy time while statutory fixes can be assessed for the rehabilitation services in the Medicaid program. We encourage you to let your Representatives and Senators know that you support the moratorium in the SCHIP bill.

II. State Children's Health Insurance Program (SCHIP)

Prior to leaving town for the August recess, both the House and Senate passed SCHIP bill. Each bill differs in costs and contains certain provisions that will likely be contentious during a conference of the bills.

The bi-partisan Senate bill includes \$35 billion over five years and would be paid for with a 61cent tobacco tax increase. Other positive provisions included in their version address mental health parity for children in the program.

The House bill, Children's Health and Medicare Protection Act of 2007 (CHAMP), provides \$50 billion over five years and is paid for with a 45 cent tobacco tax increase as well as savings from private Medicare Advantage plans. This bill also addresses mental health parity. In addition, the Medicare cost sharing for mental health services will be in line with medical benefits and eliminates the cost sharing, in Part D, for some home and community based waiver participants.

Of particular interest, the House bill includes one year moratorium language regarding the rehabilitation option. The Senate does not have this provision in their bill. At this time, NACBHDD supports the inclusion of this language and encourages you to speak with your Representatives and Senators to ask for inclusion of the language in the final version.

We expect Congress to address SCHIP when they return in September. There is some concern that bill will not be in final form prior to the September 30, 2007 deadline. However, if they decide to extend the current program advocates are concerned that this would not address the limitations of mental health benefits that currently exist in the program. Another barrier in the process is the veto threat from the President. NACBHDD will keep you updated with new developments.

III. Mental Health and Addiction Parity

Just prior to their August recess, the Senate reached a compromise on its parity bill by removing the term that would have pre-empted stronger state laws. Senators Pete Domenici (R-NM), Edward Kennedy (D-MA), and Mike Enzi (R-WY) attempted to get the bill to the floor for a vote; however it was blocked by Senator Jim DeMint (R-SC). Senator DeMint objected to a vote on the bill without allowing any debate. It is unclear how the Senate will address this when they return in September.

The House still needs to mark up their bill in the Energy and Commerce and Ways and Means Committees. House Education and Labor Committee passed the bill out of that committee earlier this summer. Advocates are working to encourage leadership to take action on this bill. More details will be provided after the August recess.