



# Status of Medicaid Regulations: Significant Impact to States

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## Overview

Over the past year, the Centers for Medicare and Medicaid (CMS) has proposed a series of Medicaid regulations that will have a significant impact on the program. Many of the proposals have been included in previous administration budget requests and others are mandated by the Deficit Reduction Act of 2005. Certain regulations, such as the definition of a public provider and graduate medical education, have been delayed until May 2008. Additionally two major regulations affecting transportation and school-based services and rehabilitation services have been delayed for six months until June 2008 as part of the recent extension of the State Children's Health Insurance Program (SCHIP).

The regulatory actions in Medicaid will have a significant impact on the program and will continue to do so as the regulations are fully implemented. When fully implemented, these regulations will reduce federal Medicaid spending by approximately \$16 billion over five years. Excluding the regulation on pharmacy pricing, the regulations would reduce federal Medicaid spending and will increase state costs, assuming services are continued. This is coming at a time when many states are starting to see enrollment increases in Medicaid and pressures in state budgets.

Below are summaries of the major Medicaid regulations with budgetary impacts and the status of the regulations:

### School-Based Services and Transportation Services

CMS issued its final regulation (CMS-2287-F) to limit Medicaid reimbursement for school-based administration and transportation on December 21, 2007. This final regulation was published in the *Federal Register* on December 28, 2007. The Medicare, Medicaid, and SCHIP Extension Act (S. 2499) includes a six month moratorium through June 30, 2008 that prohibits CMS from implementing or otherwise taking further action on the school-based administration and transportation rule. The final rule will not effect the current school year but will be in effect for the 2008-2009 school year if no further action occurs.

Under the rule, federal Medicaid payments would no longer be available for administrative activities performed by school employees or contractors, or anyone under the control of a public or private educational institution. Transportation from home to school and back for school-aged children with an Individualized Education Program or an Individualized Services Plan established under the Individuals with Disabilities Education Act would not receive federal Medicaid payments.

The regulation is estimated to reduce federal Medicaid spending by \$635 million in the first year and \$3.6 billion over five years from 2009 through 2013. Below is the link to the final rule:

<http://www.cms.hhs.gov/MedicaidGenInfo/Downloads/CMS2287F.pdf>

### **Rehabilitation Services**

The CMS proposed rule on Medicaid Rehabilitation Services (CMS 2261-P), published in the *Federal Register* on August 13, 2007, would tighten up definitions for the reimbursement of rehabilitative services under Medicaid and would require a written plan for individuals receiving these services. Federal Medicaid savings from this proposed regulation are estimated to be \$180 million in fiscal 2008 and \$2.2 billion from fiscal 2008 through fiscal 2012. The Medicare, Medicaid, and SCHIP Extension Act (S. 2499), includes a six month moratorium through June 30, 2008 that prohibits CMS from implementing or otherwise taking further action on the proposed regulation affecting Medicaid rehabilitation services.

Below is the link to the proposed regulation:

<http://www.cms.hhs.gov/MedicaidGenInfo/Downloads/CMS2261P.pdf>

### **Cost Limit for Providers Operated by Units of Government**

On January 18, 2007, CMS issued a proposed rule (CMS 2258-P) that would limit payments to government health care providers, redefine a public entity, and add additional reporting requirements. Savings to the federal government are estimated at \$120 million in fiscal 2008 and \$3.87 billion over five years.

The supplemental appropriation legislation that was signed into law in May 2007 (PL 110-28) delayed this regulation until May 25, 2008. This rule was published in the *Federal Register* on May 29, 2007 as a final rule with a comment period (CMS 2258-FC). Below is the link to the rule:

<http://www.cms.hhs.gov/quarterlyproviderupdates/downloads/cms2258fc.pdf>

### **Graduate Medical Education**

This rule proposed in May 23, 2007 would exclude any reimbursement for graduate medical education under Medicaid (CMS 2279-P). Savings to the federal government are estimated at \$140 million in fiscal 2008 and \$460 million over five years. The supplemental appropriation bill, P.L. 110-28, included a one-year moratorium in the implementation of the rule until May 25, 2008.

Below is a link to the proposed regulation:

<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=CMS-2007-0084>

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## Pharmacy Reimbursement

CMS released the final regulation on Medicaid reimbursement for prescription drugs on July 6, 2007. The rule is mandated by the Deficit Reduction Act of 2005. The rule clarifies what drug sales are included in the average manufacturer's price (AMP) and excludes customary prompt pay discounts extended to wholesalers among other changes. The new regulation is expected to save states and the federal government \$8.4 billion over the next five years, according to CMS.

On December 14, 2007, a U.S District Court judge granted a preliminary injunction that prohibits HHS from adopting a new method for calculating the average manufacturer price for prescription drugs covered by Medicaid. The plaintiffs include the National Association of Chain Drug Stores and the National Community Pharmacists Association. The rule was set to take effect on January 30, 2008.

The link to the CMS final regulation is listed below:

<http://www.cms.hhs.gov/MedicaidGenInfo/Downloads/CMS2238FC.pdf>

## Provider Tax

CMS published this proposed rule in the *Federal Register* on March 23, 2007 (CMS 2275-P) which would affect states' ability to use health care provider fees and would allow CMS greater flexibility in approving states' financing mechanisms. Under the Tax Relief and Health Care Act, Congress capped health care related taxes at 6 percent and temporarily reduced the cap to 5.5 percent from January 1, 2008 through September 30, 2011. Savings for this regulation are estimated at \$85 million in fiscal 2008 and \$115 million annually in fiscal 2009 through fiscal 2011.

The link to the proposed regulation is listed below:

<http://www.cms.hhs.gov/quarterlyproviderupdates/downloads/cms2275p.pdf>

## Medicaid Reimbursement for Targeted Case Management

CMS published an interim final rule in the *Federal Register* on November 30, 2007 that affects Medicaid reimbursement for case management and targeted case management (TCM) services. CMS estimates that the change will reduce federal Medicaid expenditures by almost \$1.3 billion over five years. This reduction is expected because states will no longer receive Medicaid reimbursement for case management services that could be paid for by other third parties or other federal programs. The regulation, which clarifies the definition of covered case management services, implements section 6052 of the Deficit Reduction Act of 2005. The provisions of the interim rule will become effective on March 3, 2008.

Below is the link to the interim final rule:

<http://www.cms.hhs.gov/MedicaidGenInfo/Downloads/CMS2237IFC.pdf>

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