



County of Los Angeles  
**CHIEF EXECUTIVE OFFICE**

713 KENNETH HAHN HALL OF ADMINISTRATION  
LOS ANGELES, CALIFORNIA 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA  
Chief Executive Officer

Board of Supervisors  
GLORIA MOLINA  
First District

YVONNE B. BURKE  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

December 10, 2007

To: Supervisor Yvonne B. Burke, Chair  
Supervisor Gloria Molina  
Supervisor Zev Yaroslavsky  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

**WASHINGTON, D.C. UPDATE**

This memorandum is to update your Board on Bush Administration efforts to significantly reduce Federal financial participation (FFP) under Medicaid through regulatory changes rather than legislation. Governor Schwarzenegger has advised the California Congressional delegation that these changes could reduce Medicaid payments to California by a total of \$1.0 billion a year. Their aggregate impact, however, could be even greater, depending on how the Centers for Medicare and Medicare Services (CMS) interprets and administers the regulations.

**NEW MEDICAID REGULATIONS**

The new Medicaid regulations, which have been proposed by the Administration, are as follows:

**Government Provider Payment Limit:** The regulatory change with the greatest fiscal impact on the County is the interim final rule, published on May 29, 2007, which limits Medicaid payments to government providers to no more than the cost of services provided to Medicaid recipients. A County-supported provision in H.R. 2206, the Federal Fiscal Year (FFY) 2007 Supplemental Appropriations Bill (P.L. 110-28) prohibits the CMS from taking any action to promulgate, finalize, or implement any rule which would limit Medicaid payments to government providers until May 25, 2008 -- one year

after the date of the bill's enactment. If implemented, this rule could result in an estimated annual loss of \$200 million in Medicaid revenue to the County.

**Payments for Graduate Medical Education Costs:** P.L. 110-28 also imposed a one-year moratorium on the promulgation, finalization, or implementation of a proposed rule, published on May 23, 2007, which would provide that costs and payments associated with Graduate Medical Education (GME) are not allowable expenditures for medical assistance that are reimbursable by Medicaid. The County's public hospitals are teaching hospitals which use interns and residents in providing hospital services. The proposed GME rule could result in an annual revenue loss of \$40 million to the County, including King-Harbor Hospital, or \$30 million a year, excluding King-Harbor Hospital.

**Hospital Outpatient Services:** A proposed rule, published on September 28, 2007, would narrow the definition of hospital outpatient services under Medicaid to the far more limited Medicare scope of covered outpatient services, which would result in lower Federal Medicaid payments, including disproportionate share hospital (DSH) payments. This proposed rule may violate the provision in P.L. 110-28 that prohibits the promulgation, finalization, or implementation of any rule which would limit Medicaid payments to government providers or for GME costs until May 25, 2008. If adopted, the proposed rule would reduce the County's Medicaid revenue, including its DSH revenue although the fiscal impact cannot be determined.

**Use of Health Care Provider Fees to Finance Medicaid Costs:** A proposed rule, published on March 23, 2007, would give CMS broader authority to disapprove a state's use of health care provider fees and taxes to finance the non-federal share of Medicaid costs. The State of California, which currently uses provider fees to help finance Medicaid costs associated with managed care, nursing homes, and centers for the developmentally disabled, estimates that the proposed rule could result in a loss of \$300 million a year in Federal Medicaid matching funds. If finalized, the rule also could jeopardize the use of provider fees as a financing mechanism for health care reform in the State.

**Targeted Case Management Services:** On December 4, 2007, CMS published an interim final rule that narrows the definition of targeted case management services reimbursable by Medicaid funds. The new definition would exclude case management activities that are integral to non-medical programs, such as parole, probation, and public guardianship. This change could preclude the County from continuing to receive Medicaid funding for case management services provided by the County's Probation Department and Public Guardian – a potential loss of more than \$3.0 million a year. The effective date of this interim final rule is March 3, 2008.

**Rehabilitative Services:** A proposed rule, published on August 13, 2007, would significantly narrow the definition of rehabilitative services which are reimbursable by Federal Medicaid funds. For example, it could preclude reimbursement of mental health services provided to many persons with chronic mental illness who may never fully recover. The proposed rule also provides that any services which are "intrinsic elements" of another Federal, state, or local program, such as foster care, child welfare, or public guardianship, would be ineligible for FFP under Medicaid. The fiscal impact of this proposed rule on the County and other providers cannot be estimated with any degree of certainty because much of the regulatory language is vague or subject to varying interpretations. For example, the proposed rule does not define "intrinsic elements" – a key definition which will determine whether a service is reimbursable by Medicaid funds.

**School-Based Services:** A proposed rule, published on September 7, 2007, would end Medicaid reimbursement for all administrative activities, including Medicaid outreach and enrollment activities, by school employees. It also would end Medicaid reimbursement of transportation services provided by school employees in the provision of Medicaid eligible services for school children who are on Medicaid. The State estimates that this rule could reduce its Medicaid funding by \$100 million a year.

## **STATUS OF REGULATIONS**

None of these Medicaid regulations have taken effect. Five of seven regulations still are in the proposed rule stage. The effective date of the interim final rule on targeted case management services is March 3, 2008, and the final rule on government provider payment limits cannot be implemented until May 25, 2008, pursuant to the statutory moratorium language included in H.R. 2206 (P.L. 110-28). The same moratorium language precludes CMS from finalizing and implementing the proposed GME rule and hospital outpatient services rule before that date.

The County recently joined the National Association of Counties, California State Association of Counties, and 67 other organizations in signing the attached joint letter to Senators, expressing opposition to these regulations and urging that legislation be enacted to stop their implementation. The County's Washington, D.C. advocates have been working with representatives of other state and local governments, including the State of California, to pursue legislation which would extend the current moratorium on regulations which would limit Medicaid payments for government providers or for GME costs, and also impose a moratorium on the implementation of the other Medicaid regulations. The main obstacle has been finding a legislative vehicle which could be enacted. That is, the President either would have to sign such a bill, or Congress would have to override the President's veto. The President already has threatened to veto State Children's Health Insurance Program (SCHIP), omnibus appropriations, and other

Each Supervisor  
December 10, 2007  
Page 4

potential legislative vehicles for imposing a moratorium on the implementation of these regulations.

We will continue to keep you advised.

WTF:GK  
MAL:MT:hg

Attachment

c: All Department Heads  
Legislative Strategist

December 2007

Dear Senator:

The undersigned organizations are dedicated to the provision of high-quality, affordable health care for all Americans, including the 57 million Americans who rely on the Medicaid program for their health care. The purpose of this letter is to express our strenuous opposition to a series of Medicaid regulations, which collectively will hurt the ability of Medicaid patients and the uninsured to receive necessary health care services. We urge immediate attention to these devastating regulations during this session of the 110th Congress.

Review of the regulations indicate that the aggregate impact will be specifically targeted on providers serving America's most vulnerable children, seniors, people with disabilities and low income families through the Medicaid program.

These regulations single out public providers for drastic reductions in reimbursement and will have the likely impact of substantially reducing or eliminating critical services for Medicaid patients and the uninsured in many parts of the country. These regulations would affect beneficiaries' access to quality care at teaching hospitals across the nation by eliminating Medicaid participation in graduate medical education. The regulations would cut reimbursement to public hospitals, which are the safety net for America's imperfect health care system and which provide emergency response capabilities, trauma care, neonatal intensive care, burn units, and psychiatric emergency care. The regulations would also restrict what states may cover as hospital outpatient services. Two other regulations would endanger the provision of school-based services and rehabilitative services, including services for individuals with mental illnesses or developmental disabilities. Another regulation would drastically reduce the ability of states to use provider taxes to fund healthcare for indigent populations.

At a time when states are working toward expanding health care coverage for the uninsured, the CMS's proposal would thwart their progress by weakening an already fragile safety net and will likely increase the number of uninsured Americans rather than help improve our health care system. We urge you to ensure that there is a moratorium through 2008 on all these regulations.

The Bush Administration is claiming that these regulations are needed to protect the fiscal integrity of the Medicaid program. This is a goal that we wholeheartedly share. These proposed regulations, however, go far beyond any steps that might be necessary to achieve this stated goal. We firmly believe the aggregate impact of these regulations would undermine the already fragile viability of our nation's health care safety net and reduce or eliminate access to health care services for many millions of low income patients.

We urge you to take the next step and enact legislation to stop implementation of these proposed rules and help protect America's most vulnerable populations.

Sincerely,  
AFL-CIO  
Alliance for Children and Families  
American Academy of Pediatrics

American Cancer Society Cancer Action Network  
American Federation of State, County and Municipal Employees  
American Federation Teachers  
American Hospital Association  
American Network of Community Options and Resources  
American Occupational Therapy Association  
American Podiatric Medical Association  
American Psychiatric Association  
American Public Health Association  
Americans for Democratic Action, Inc.  
Association of Community Organizations for Reform Now (ACORN)  
Bazelon Center for Mental Health Law  
California Association of Public Hospitals and Health Systems  
California Children's Hospital Association  
California Hospital Association  
California State Association of Counties  
Campaign to End AIDS  
Child Welfare League of America  
Children and Adults with Attention-Deficit/Hyperactivity Disorders  
Community Catalyst  
Consumers Union  
Easter Seals  
Families USA  
First Focus  
Generations United  
Healthcare Association of New York State  
HIV Medicine Association  
Hospital & Healthsystem Association of Pennsylvania  
Housing Works  
Jewish Council for Public Affairs  
Jewish Federation of Metropolitan Chicago  
Joint Public Affairs Committee for Older Adults  
Los Angeles County  
Mental Health America  
Mexican American Legal Defense & Educational Fund  
Michigan Health & Hospital Association  
National Advocacy Center of the Sisters of the Good Shepherd  
National Alliance on Mental Illness  
National Association for Children's Behavioral Health  
National Association of Community Health Centers  
National Association of Counties  
National Association of County Behavioral Health and Developmental Disability  
Directors  
National Association of Public Hospitals and Health Systems  
National Association of School Nurses  
National Association of Social Workers  
National Association of State Head Injury Administrators  
National Association of Urban Hospitals  
National Center for Law and Economic Justice  
National Education Association  
National Health Law Program, Inc.  
National Respite Coalition  
National Women's Health Network

National Women's Law Center  
NETWORK - a National Catholic Social Justice Lobby  
New York AIDS Coalition  
New York City Health and Hospitals Corporation  
OMB Watch  
Private Essential Access Community Hospitals  
RESULTS  
San Francisco AIDS Foundation  
Service Employees International Union  
The Arc of the United States  
The Children's Partnership  
UJA Federation of New York  
United Cerebral Palsy  
United Jewish Communities  
Women of Reform Judaism