



NATIONAL ASSOCIATION OF STATE MEDICAID DIRECTORS

August 18, 2004

Dennis Smith
Director, Center for Medicaid and State Operations
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

Dear Mr. Smith:

We are writing in regard to a letter on “ending chronic homelessness” that was sent to state Medicaid directors by Glenn Stanton, Acting Director of the Disabled and Elderly Health Programs Group, on May 25, 2004. We have several concerns about statements in the letter that states should suspend, rather than terminate, Medicaid benefits while a person is in a public institution or Institute for Mental Disease (IMD).

The letter states that “states should not terminate eligibility for individuals who are inmates of public institutions or residents of IMDs...instead, states should establish a process under which an eligible inmate or resident is placed in a suspended status so that the state does not claim FFP for services.”

This letter appears to mandate a policy of suspending, rather than terminating, Medicaid benefits for inmates. While suspension of benefits is one option for helping to ensure health care for persons discharged from institutions and at risk of homelessness, it is certainly not the only option. Some states may choose to implement this strategy, but many other methods can be used to achieve the same goal. Each state must be granted the flexibility to determine which strategies for preventing loss of health care for discharged inmates are the most practical and cost-effective for their state.

A policy of requiring states to suspend benefits while maintaining eligibility may not be supported by statute or case law. The letter asserts that federal financial participation (FFP) for Medicaid services is distinct from eligibility for services and that an inmate of an institution is eligible for Medicaid even if FFP is not available. However, 42 U.S.C. 1396d(a)(27)(A) excludes payments for care or services for inmates of public institutions from the definition of medical assistance. Services for inmates are not merely excluded from FFP; they are excluded from the definition of medical assistance. Therefore, states should not be required to maintain Medicaid eligibility for inmates. The U.S. Supreme

Court interpretation of the statute in Connecticut Department of Income Maintenance v. Heckler, 471 U.S. 524 (1985), also indicates that inmates of institutions are excluded from receiving services from the Medicaid program, not just from FFP. The Heckler decision states that “the Medicaid Act does not cover services performed for patients between the ages of 21 and 65 in an ...IMD.” Two additional federal court cases, Legion v. Richardson, 415 U.S. 939 (1974), and Kantrowitz v. Weinberger, 429 U.S. 819 (1976), support the view that services for inmates are excluded from the definition of medical assistance and are solely the province of the state. While states clearly have an obligation to provide care for inmates of state institutions, this obligation is outside the scope of the Medicaid program and Medicaid eligibility policies should not apply to this population.

In addition, requiring states to suspend benefits for inmates could be administratively complex to implement and may not be a cost efficient means of ensuring benefits for persons leaving institutions. This policy could require expensive changes to state systems and significant amounts of staff time could be spent tracking the status of inmates. It is simply not practical for all states to track inmates and conduct annual eligibility redeterminations for persons who may be incarcerated for decades.

We are also concerned that the letter to Medicaid directors does not provide clarification on two important issues. The letter does not clearly explain that states are not required to provide Medicaid services to inmates. The letter could easily be misinterpreted to imply that states need to maintain eligibility for persons in institutions and provide the Medicaid benefit package to them, even though no FFP is available. The letter also fails to clarify whether or not an administrative match is available for the costs associated with suspending eligibility for this population, if a state should choose to implement this option.

While we fully support CMS’ initiative to ensure access to Medicaid benefits for persons leaving institutions, we do not believe that suspension of eligibility for inmates is the only appropriate method for achieving this goal. Improvements in the areas of case management and discharge planning that also address shelter and maintenance are equally important in ending chronic homelessness. Many states have implemented other creative, cost-effective solutions to this issue, some of which are highlighted in the CMS report *Improving Access for People Experiencing Chronic Homelessness: State Examples*. For example, several states have successful pre-release planning programs that provide inmates the opportunity to apply for all benefits for which they might be eligible prior to returning to the community.

We encourage you reissue the May 25, 2004 letter with the additional clarifications described above. It is critical that guidance from CMS clearly state that suspension of benefits is a state option, not a mandate; that states are not required to provide Medicaid benefits at 100% state cost to inmates; and that FFP is available for administrative costs related to eligibility determinations and suspension of benefits for this population.

Thank you for your attention to this matter and please let us know if we can be of assistance.

Sincerely,



Nancy Atkins
Chair, National Association of
State Medicaid Directors



Jerry Friedman
Executive Director, American Public
Human Services Association