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AUG 16 2000
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FISCAL BUREAU

ISSUE BRIEF 00-24

A Second Update on Medicaid Intergovernmental Transfers

August 4, 2000

Summary

Although Congress is adjourned for the August recess, the Health Care Financing Administration (HCFA) is working overtime. A lot has happened since FFIS' last *Issue Brief* on Intergovernmental Transfers (*Issue Brief 00-21*, July 19). HCFA released a Dear State Medicaid Director letter on Intergovernmental Transfers and had a meeting with staff from the National Governors' Association. The first audit reports from the Inspector General (IG) in the Department of Health and Human Services (HHS) may become public soon. The IG has begun conducting audits in Alabama, Nebraska and Pennsylvania (with regard to nursing homes) and Alabama, Illinois and North Carolina (with regard to hospitals). Finally, more information is available on how states are using the additional funds they receive through the upper payment limit. This *Issue Brief* summarizes these recent developments.

Recent Federal Actions

On July 26, 2000, HCFA released a "Dear State Medicaid Director" letter on intergovernmental transfers. The letter can be accessed on HCFA's website at www.hcfa.gov/medicaid/cmsosmd.htm. The purpose of the letter was to inform states of HCFA's concerns and the process it would follow to address them.

HCFA's says its concern is that states are "calculating the maximum amount that, in theory, could be paid to each Medicaid facility; adding these amounts together to create excessive payment rates to a few county or municipal facilities; claiming Federal matching dollars based on these excessive payment rates; and then directing these county or municipal facilities to transfer large portions of the excessive payments back to the State government." HCFA believes this practice is inconsistent with the Medicaid law requiring provider payments to be economic and efficient.

HCFA estimates that state use of the UPL provision accounts for $1.9 billion of the $3.4 billion increase in federal Medicaid spending for fiscal year 2000. Furthermore, it estimates the five-year cost to be at least $12 billion because of the influx of new state proposals. HCFA identified 17 states that have approved plan amendments and another 11 that have submitted amendments. The following tables list states with approved and pending UPL plans.

States Currently Using the Upper Payment Limit Provision

Alabama	Minnesota	Oregon
Colorado	Nebraska	Pennsylvania
Illinois	New Hampshire	Tennessee
Indiana	New York	Virgin Islands
Iowa	North Carolina	Washington
Michigan	North Dakota	

States with Pending Upper Payment Limit Proposals		
Alaska	Missouri	South Carolina
Arkansas	Kentucky	South Dakota
Georgia	Montana	Utah
Kansas	New Jersey	

HCFA plans to release a Notice of Proposed Rulemaking (NPRM) on the use of the "upper payment limit" to maximize federal matching payments. The HCFA letter to state Medicaid directors indicates the NPRM will be released within a few weeks "to end the abusive practices while protecting legitimate Medicaid programs and ensuring a smooth transition for states and public hospitals that historically have come to rely on these extra federal funds." HHS has not released details of this transition but says it is soliciting input from affected states and providers.

In a meeting with staff from the National Governors' Association, the Director of HCFA's Center on Medicaid and State Operations indicated that the transition plan would likely place states in three different groups:

- States with plans pending would be quickly denied;
- States with plans "deemed" approved would be asked to voluntarily comply with the ruling and HCFA would pursue action against them; and
- States that have plans approved and in place would phase them out over a period of several years.

States will likely have 30 days to comment after the NPRM is published in the *Federal Register*.

HCFA also may propose legislation that denies pending UPL plan amendments before the NPRM is published or any regulation takes effect. In addition, the Administration is drafting a proposal to create a new, non-Medicaid program that would target funds to public hospitals.

How States Use the Funds

Some states are using the additional funds they receive through utilizing the upper payment limit for expenditures that are not Medicaid-related while other states use the funds to finance their Medicaid programs. Examples of how states are using the funds include:

- Allowing public hospitals to keep a portion of the funds to help pay for uncompensated care;
- Paying the statutory state share of Medicaid or the State Children's Health Insurance Program (SCHIP);
- Financing other health programs;
- Cutting taxes;

- Reducing state debt; and
- Funding education programs.

Nebraska has collected approximately $65 million from the UPL provision and expects at least $14 million more. Most of the money ($54 million) has been earmarked to help nursing homes convert beds into less costly assisted-living units. The rest has been set aside to pay the state's share of Kids Connection, which provides health coverage for low-income children. Any additional money goes into an endowment fund to support public health projects.

A state legislator in New Jersey indicated that the legislature planned to use the additional funds for a tax cut if HCFA approves its plan amendment. Kansas and Louisiana have used the funding to reduce their budget deficits. Kansas hopes to receive more than $100 million through the provision. It plans to use some of the money to finance the state's drug plan for seniors, unless Congress passes a prescription drug plan.

For additional information, contact:

Trinity Tomsic
Federal Funds Information for States
444 North Capitol Street
Suite 642
Washington, DC 20001-1511
202/624-8577
Fax: 202/624-7745
www.ffis.org
E-mail: ttomsic@sso.org