

Congress of the United States
Washington, DC 20515

August 7, 2008

Via Electronic Transmission

The Honorable Michael O. Leavitt
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Leavitt:

Thank you for the timely issuance of guidance to States and other stakeholders with regard to the implementation of the moratorium on the Medicaid case management rule enacted as part of the Supplemental Appropriations Act of 2008. Much of this guidance, included in a report entitled "CMS 2237 IFC: Targeted Case Management," which was issued on July 30, 2008, comports with congressional intent and the statutory language of the moratorium.

We request that you clarify that the integral component or intrinsic element test for State plan case management services (included in section 441.18(c)(4) of the interim final rule on case management, which was issued on December 4, 2007) does not apply during the moratorium period. This test, if applied, would not allow Medicaid to pay for these services if the services could be provided by another program, regardless of whether the beneficiary could access those services in that program.

Congress clearly intended for the moratorium to apply to this provision of the interim final rule. The Committee report on the House-passed bill, H.R. 5613, notes, "The rule would impose an integral component test to prohibit Medicaid coverage of services that CMS deems are integral to other Federal or State non-medical programs. This test has no basis in the Medicaid statute. Further it mirrors a policy that CMS sought to include in the rehabilitation services option under the Deficit Reduction Act of 2005 (DRA), but which was specifically rejected by Congress. The moratorium would also apply to this portion of the rule."¹

Congress has previously legislated on this issue. In the DRA, Congress clarified Medicaid coverage of case management services, including in the case of those services provided to children receiving foster care. In the DRA, we further clarified the statute to make clear that Medicaid case management funds cannot be used to pay for services for which another entity is legally liable for payment, as set forth in Medicaid statutory provisions on third-party liability.

¹U.S. House of Representatives Committee Report 110-600, Protecting the Medicaid Safety Net Act of 2008.

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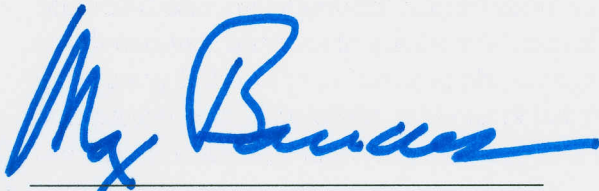
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In enacting the DRA, Congress rejected a CMS proposal to establish an integral component or intrinsic element test like the test included in the interim final rule. At present, the Medicaid statute does not provide any basis for such test. While the DRA makes it clear that the Medicaid case management benefit should not be billed for the direct delivery of medical, social, or educational services to which a Medicaid beneficiary has been referred, and that statutory third-party liability provisions apply, Congress did not intend to open the door to an integral component test. Therefore, it is our belief that the moratorium would prohibit application of the provision of the rule applying this test, and would also prevent CMS from enforcing an integral component test under any other authority.

States are eager to ensure that their case management programs are in compliance with Federal law and policy. Ambiguity on these issues could lead States to inappropriately limit access to essential case management services for exceedingly vulnerable populations. Therefore, we request that you clarify your position. Please respond to us no later than August 12, 2008.

Should you have any questions, please contact David Schwartz with Chairman Baucus at (202) 224-4515 or Amy Hall with Chairman Dingell at (202) 225-2927.

Sincerely,



Max Baucus
Chairman
Committee on Finance
United States Senate



John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives