SUMMARY
H.R. 5613, THE "PROTECTING THE MEDICAID SAFETY NET ACT OF 2008"

The "Protecting the Medicaid Safety Net Act of 2008" – H.R. 5613 – was introduced by Representatives John D. Dingell (D-MI) and Tim Murphy (R-PA) on March 13, 2008. This legislation would place a moratorium until March 2009 on seven Medicaid regulations issued by the Department of Health and Human Services. According to the Congressional Budget Office, these regulations would together reduce Federal Medicaid funding to States for vital programs and services by nearly $20 billion over the next five years.

The "Protecting the Medicaid Safety Net Act of 2008" would delay the implementation of the following regulations:

- ***Rehabilitation services (proposed rule issued August 13, 2007; current moratorium through June 30, 2008).*** This proposed rule limits rehabilitation services for Medicaid beneficiaries in a number of ways. It would severely curtail the ability of people with chronic and temporary disabilities to receive rehabilitation services now covered under Medicaid. It would eliminate payment for certain rehabilitation services for children in foster care or for people with mental illness. It would increase the administrative burden on States and providers by requiring additional paperwork to receive Medicaid reimbursement. The rule particularly hurts those with developmental disabilities, mental illness, and people who, without access to rehabilitation services, could see their health deteriorate. It would also jeopardize the ability of people with disabilities to live independently in the community because access to needed services would no longer be available.

- ***Targeted case management (TCM) (interim final rule issued December 4, 2007, effective March 3, 2009; no current moratorium).*** Medicaid's case management benefit is intended to help people with disabilities, chronic illnesses, or special needs to gain access to the full spectrum of health care and support services by arranging for and coordinating care. States may provide case management for adults, but must provide it for children. This rule would hurt efforts to integrate school-based medical services for children with disabilities, because States would no longer be able to receive funding for important care coordination activities. The rule would fragment services for children in foster care by prohibiting child welfare agencies from being paid for providing Medicaid services. The rule would also restrict Medicaid's ability to coordinate and manage the care of a child with the most appropriate team of professionals by placing an arbitrary limit of one case manager per child. Finally, this rule would roll back Federal efforts to transition people out of nursing homes by limiting the assistance available to people with disabilities to secure needed services in a community setting.

- ***School-based transportation and outreach (final rule issued December 28, 2007; current moratorium through June 30, 2008).*** Under current practice, schools may be reimbursed for their administrative activities associated with the Medicaid program, including outreach, assistance with enrollment, and referring children to Medicaid providers and Medicaid services. Under current practice, schools also may be reimbursed for extremely limited, specialized medical transportation for Medicaid children to get to and from school. This rule prohibits all Medicaid funding of specialized medical transportation for children with disabilities in school settings. The rule also prohibits Medicaid payment for administrative activities performed by an employee or contractor of a school in conjunction with Medicaid responsibilities, such as Medicaid outreach to children, helping with Medicaid eligibility determinations or enrollment, or referral, coordination, and monitoring of Medicaid services to children.

- ***Provider taxes (final rule issued February 22, 2008, effective April 22, 2008; no current moratorium).*** Under current law States are allowed to tax providers as a way to help pay for Medicaid expenses. These taxes are supported by providers because the taxes are used to improve provider payment rates and improve quality. This rule redefines what CMS would consider an "allowable" provider tax beyond what is in the law (P.L. 109-432). This dramatic change in the definition of a provider tax will put current, long-standing State programs in jeopardy and jeopardize State funding for Medicaid programs. This will result in States reducing services, cutting provider payments, or eliminating coverage.

- ***Hospital outpatient (OPD) (proposed rule issued September 28, 2007; no current moratorium).*** This rule would significantly restrict the types of hospital outpatient services Medicaid can cover. For example, Medicaid would be prohibited from covering certain services such as dental and vision services commonly provided to Medicaid patients through outpatient clinics. The rule would also restrict the ability of States to cover services in outpatient clinics that are separate from hospitals – a common way States have served people in communities and reduce emergency room use. The rule would also lower the amount Medicaid can pay for outpatient services. This could jeopardize patient access given Medicaid's already chronically low payment rates.

- ***Graduate Medical Education (GME) (proposed rule issued May 23, 2007; current moratorium through May 25, 2008).*** This rule would prohibit Medicaid payment for graduate medical education programs that train providers so they have the experience and skills necessary to meet the unique needs of Medicaid beneficiaries, particularly individuals with disabilities. Eliminating Medicaid funding for graduate medical education will reduce the number of providers with the skills and training to care for the special needs of Medicaid beneficiaries. It will also exacerbate shortages of trained physicians in certain specialties as facilities would be forced to pare back their training programs.

- ***Intergovernmental transfer (IGT) (final rule issued May 29, 2007; current moratorium through May 25, 2008).*** This rule places strict limits on Medicaid payments to critical safety net institutions such as hospitals and nursing homes that serve Medicaid beneficiaries. If these payments are reduced or eliminated, the critical access to care and services provided by these institutions may be in jeopardy. In addition, such cuts may undermine the strong community employment base these institutions provide.

In 2008, the Committee on Energy and Commerce held four hearings where concerns about the regulations were voiced by various stakeholders. In particular, stakeholders noted that many of the regulations were altering longstanding Medicaid policy without direct Congressional authorization. Certain regulations, such as the targeted case management and provider tax regulations, were the subject of recent Congressional action, but CMS's regulation went far beyond the scope of the legislative changes. The National Governors Association and the National Association of State Medicaid Directors have issued bipartisan letters decrying the effect these regulations would have on States and beneficiaries.

The "Protecting the Medicaid Safety Net Act" would stop the implementation of these rules through March 2009 in order for Congress to more fully examine their merit. A number of the regulations covered by this legislation have been temporarily blocked by Congress due to bipartisan concern about their effect on providers and beneficiaries.