Oregon

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June 2, 2008

The Honorable Peter Courtney, Co-Chair
The Honorable Jeff Merkley, Co-Chair
State Emergency Board
900 Court St, NE
H-178 State Capitol
Salem, OR 97301-4048

RE: Federal Regulation Analysis and Audit Reports

Dear Co-Chairpersons:

Please accept this information from the Department of Human Services (DHS) regarding major federal rules changes and audits that could potentially impact the DHS budget.

The first category of issues is final and proposed Federal regulations. CMS recently published regulations that dramatically affect the Medicaid program financially and programmatically. The CMS regulations are:

1. Targeted Case Management (TCM) (Effective March 3, 2008): An estimated $34.6 million Federal Funds and $23.1 million General Fund per biennium.
2. Graduate Medical Education (GME) (Effective August 1, 2008): An estimated $7.8 million Federal Funds and $5.0 General Funds 2007-09 biennium.
3. Rehabilitation Services (Proposed Rule no effective date): If implemented as proposed an estimated $63.4 million Federal Funds and $42.3 General Funds per biennium.
4. Local Government Cost Limit for Providers (Proposed Rule no effective date): If implemented as proposed an estimated $7.5 million Federal Funds and $7.5 million General Funds per biennium are needed for the additional administrative work and reduction of Medicaid match for Developmental Disabled clients.

DHS provided CMS with written responses to the proposed regulations, participated in nationwide conference calls to seek clarification, and informed our Congressional delegation regarding the budgetary and programmatic impact to Oregon. Several regulations are currently under moratorium delaying the implementation. DHS will continue to work with our Congressional delegation to extend the moratorium and offer "fixes" to maintain Congressional intent, without the unintended consequences of CMS's interpretation of these regulations.

The second category is three audit findings:

- The Temporary Assistance for Needy Families (TANF) Emergency Assistance (EA) annual redetermination of eligibility, and
- Two findings for Medicaid Personal Care Services.

DHS has taken corrective action based on guidance from the Administration for Children and Families (ACF) to redetermine a child's eligibility annually for the TANF EA program. This will reduce TANF Federal Funds for Children, Adults, & Families' (CAF) Child Welfare (CW) programs. DHS has developed several management options to eliminate the need for General Fund backfill created by this federal policy change.

The Centers for Medicare and Medicaid Services (CMS) has disallowed the DHS practice regarding Medicaid eligibility of foster care "special rate" payments paid for Personal Care Services. DHS has appealed the CAF CW disallowance and is attempting to negotiate a settlement.

CMS conducted an audit of the Addictions & Mental Health (AMH) Residential Treatment program for Personal Care Services; however DHS has not received the final report. CMS is challenging the rate methodology employed for the AMH program; however no DHS action has been taken in the absence of the final CMS audit report.

Sincerely,

Jim Scherzinger,
Deputy Director of Finance

cc: John Britton, Legislative Fiscal Office
Sheila Baker, Legislative Fiscal Office
Eric Moore, Department of Administrative Services
Jim Scherzinger, Deputy Director of Finance

DEPARTMENT OF HUMAN SERVICES (DHS)
FEDERAL REGULATION ANALYSIS & AUDIT FINDINGS
UPDATED MAY 30, 2008

FEDERAL REGULATION ANALYSIS

Targeted Case Management (TCM) (CMS 2287-IFC)

- Eliminates claiming Medicaid reimbursement for child welfare and juvenile justice staff,
- Restricts claiming Medicaid reimbursement to one Medicaid case manager,
- Eliminates claiming Medicaid reimbursement for some administrative functions,
- Reduces claiming time for individuals transitioning from institutions,
- Requires claims to be documented and billed on a medical service model in 15 minute increments, and
- Prohibits community providers from authorizing Medicaid covered services as part of an overall case planning strategy.

Impacted Division(s)/Agency:	All DHS Divisions, Oregon Youth Authority (OYA) & Oregon Commission on Children and Families (OCCF).
Provider(s) Affected:	DHS Child Welfare (CW) and Self-Sufficiency (SS), OYA Staff, local Public Health, Tribes, local Education Agencies & local Developmentally Disabled (DD) providers.
Estimated Federal Medicaid Loss:	$34.6 million Federal Funds, $23.1 million General Funds this biennium (DHS only). Another provision, limiting each client to only one Medicaid case manager, takes effect April 2010, has not been estimated, and will not affect revenues this biennium.
Effective Date:	March 3, 2008
Internal Management Strategy:	Procedures have been developed to cease claiming Medicaid reimbursement effective April 1, 2008, for CW, Self-Sufficiency (SS), and OYA TCM services.

Agency staff are currently drafting new State Plan Amendments (SPA) for those TCM programs that will be continuing, including Developmental Disabilities, High Risk Infants, Early Intervention, Tribes, and HIV/Tuberculosis. Rate changes, as required in rule, are awaiting further guidance from Centers for Medicare and Medicaid Services (CMS) and may impact budget projections. Agency staff are working with the CMS Regional Office to inventory services that will be required to be considered under the "one case manager" provision of the rule, which takes effect April 1, 2010.

For programs claiming Medicaid Administrative services (such as County Health Depts., Area Agencies on Aging (AAA), Schools and OCCF's Healthy Start), DHS is awaiting further clarification on rule impacts to these claims.

Legal Strategy: Seven States have filed suit against the Department of Health & Human Services (DHHS) for the TCM rules. Oregon has consulted the Department of Justice (DOJ) and is awaiting a brief. Once a recommendation has been received DHS will make decisions accordingly.

Political Strategy: In addition to our responses to the rules, DHS has provided potential "fixes" to Senator Smith's office at their request. The intent of the "fixes" was to introduce legislation to help mitigate the direct impacts to the affected states. Our intent is to continue to work with all our Congressional delegates.

Contact: Julie Strauss 503-945-5756

DEPARTMENT OF HUMAN SERVICES (DHS)
FEDERAL REGULATION ANALYSIS & AUDIT FINDINGS
UPDATED MAY 30, 2008

Graduate Medical Education (CMS 2279-P)

- Eliminates claiming Medicaid reimbursement for all Graduate Medical Education (GME).

Background: DHS eliminated claiming Medicaid reimbursement for six teaching hospitals on July 2, 2006, however continued claiming on behalf of the Oregon Health & Sciences University (OHSU). On March 13, 2008 a SPA was submitted to reinstate the GME state option for the six teaching hospitals.

Impacted Division(s)/Agency: Division of Medical Assistance Programs (DMAP), & OHSU.

Provider(s) Affected: OHSU, Legacy Emanuel, Legacy Good Samaritan, Merle West, Providence Portland, and Providence St. Vincent.

Estimated Federal Medicaid Loss: $7.8 Million Federal Funds, $5.0 General Funds per biennium. (DHS Only)

Effective Date: Moratorium has been extended to August 1, 2008.

Internal Management Strategy: DHS will discontinue claiming Medicaid reimbursement on behalf of OHSU through August 1, 2008. If the decision is to continue this program at the current funding level an additional $7.8 Million in General Funds would be needed to maintain DHS funded GME.

Legal Strategy: Continue to advocate for support through Congressional delegation.

Political Strategy: Continue to work with the Senate Finance Committee through Senator Smith's office. In recent discussions with staff at Senator Smith's office they indicated both houses of Congress were opposed to the elimination of GME. Oregon will weigh in and

aggressively comment on the potential impacts if this issue should move forward.

Contact: Michael Stickler 503-947-5413

Rehabilitation Services (CMS 2261-P)

- Eliminates claiming Medicaid reimbursement for services that are not "restorative",
- Requires extensive planning and documentation for client services, and
- Eliminates claiming Medicaid reimbursement for services furnished as part of a non-medical program, such as schools, therapeutic foster care or "public institution systems".

Background: Oregon's State Plan for Optional Rehabilitation Services includes Addictions & Mental Health's (AMH) mental health, alcohol and drug services; Children, Adults, & Families' (CAF), OYA, and local county services' Behavioral Rehabilitation Services (BRS) and local school-based services for children with disabilities.

Impacted Division(s)/Agency: AMH (including local county mental health agencies), CAF, OYA, local Juvenile Departments, and local Education Agencies (schools and Education Services Districts (ESD)).

Provider(s) Affected: Contracted community providers, Counties, and Education agencies.

Estimated Federal Medicaid Loss: $63.4 million Federal Funds, 42.3 million General Funds per biennium (DHS only (CAF and AMH))

Effective Date: Moratorium on proposed rule ends June 30, 2008

Internal Management Strategy: Should this proposed rule become final DHS will analyze and develop a work plan and strategy for implementation.

Legal Strategy: At this time, without the rule being final, there are no legal considerations to be taken.

Political Strategy: During the response period, DHS submitted a letter to CMS outlining concerning provisions within the rule. CMS indicated an overwhelming number of

responses concerning these rules. It can be expected the final rules will have some changes reflective of these comments.

In response to a request from Senator Smith's office, "fixes" to some concerning provisions (regarding services within child welfare and other child serving agencies) were included in the alternative TCM language.

Contact: Michael Stickler 503-947-5413 & Julie Strauss 503-945-5756

DEPARTMENT OF HUMAN SERVICES (DHS)
FEDERAL REGULATION ANALYSIS & AUDIT FINDINGS
UPDATED MAY 30, 2008

School-based Services (CMS 2287-F)

- Eliminates claiming Medicaid reimbursement for administrative costs and some transportation services by schools.

Impacted Division(s)/Agency:	DMAP
Provider(s) Affected:	ESD & School Districts.
Estimated Federal Medicaid Loss:	$20 Million Federal Fund, $20 Million Other Funds per biennium. (Not DHS Budget)
Effective Date:	Moratorium ends June 30, 2008
Internal Management Strategy:	DHS will discontinue claiming Medicaid reimbursement for administration and some transportation services on behalf of schools effective June 30, 2008. Continue working with the Dept. of Education on alternative recommendations and proposals. Examine the Medicaid out-reach function currently being done within the schools and potentially shift the duties to public health.
Legal Strategy:	DHS, in consultation with DOJ, will evaluate any legal options available to restore school-based services.
Political Strategy:	Partner with external stakeholders and school districts to provide information to Oregon's Congressional delegation to demonstrate the need to maintain this efficient and effective delivery site.
Contact:	Michael Stickler 503-947-5413

DEPARTMENT OF HUMAN SERVICES (DHS)
FEDERAL REGULATION ANALYSIS & AUDIT FINDINGS
UPDATED MAY 30, 2008

Cost Limit for Providers Rule (CMS 2258-FC)

- Limits claiming Medicaid reimbursement (with some exceptions) to government-operated providers to the cost of providing the service. The exceptions are:
  1. Indian Health Service Facilities
  2. Tribal 638 Facilities
  3. Medicaid Managed Care Plans
  4. Prepaid Inpatient Health Plans
  5. Prepaid Ambulatory Health Plans
  6. Federally Qualified Health Centers
  7. Rural Health Clinics
  8. Disproportionate Share Hospitals
  9. State Children's Health Insurance Program (SCHIP)

Impacted Division(s)/Agency: All DHS Divisions, OYA, and OCCF.

Provider(s) Affected: Units of Government – All Governmental Providers.

Estimated Cost to State: $7.5 Million Federal Fund and $7.5 Million General Funds per biennium. (DHS Only for anticipated administrative burden)

Effective Date: Regulation vacated on May 23, 2008

Internal Management Strategy: This regulation has been vacated by the US District court for the District of Columbia due to a lawsuit brought forward by a national coalition of hospitals; however CMS could republish the regulation effective 60 days from publication.

DHS must determine which providers are units of government, receive annual cost reports from each affected unit of government, and establish an audit process for the cost reports. If DHS identifies payments exceeded costs for a service, DHS must collect the overpayment and return the federal share to the federal government.

Although this rule would reduce the revenue of some units of government, the most significant impact is likely to be a large administrative burden on DHS and units of government to complete, audit the cost reports and adjust payments. Additionally, contracts with providers will need to be revised to incorporate the requirements of the regulation.

Legal Strategy: DHS, in consultation with DOJ, will evaluate any legal options available.

Political Strategy: Continue to partner with governmental providers to educate Congress and State delegation that this is an additional administrative burden only and would not reduce Title XIX payments in Oregon. Oregon has a state statute that requires governmental entities to be not for profit. Therefore, there is no need for the actual cost reports.

Contact: Mary Alexander 503-947-5101

MEDICAID PROVIDER TAXES

Provider Taxes in Oregon

- **Medicaid managed care plan tax**
  - Limited to Oregon Health Plan managed care plans
  - Current tax rate is 5.5% of capitation payments.
  - $133 million OF revenue for 2007-2009 biennium.
  - Potential matching Federal Funds = $212 million.

    Note: Provider tax dollars are matched the same way GF is matched for Medicaid purposes.
- **Hospital tax**
  - Exempt hospitals include Type A and B hospitals; Shriner's Children Hospital; and hospitals operated by the U.S. Department of Veterans Affairs.
  - Current tax rate is .63% of net patient revenue.
  - $82 million OF revenue for 2007-2009 biennium.
  - Potential matching Federal Funds = $131 million.

    Note: Provider tax dollars are matched the same way GF is matched for Medicaid purposes.
- **Long-term care facility tax**
  - Exempt facilities include:
    - Oregon Veterans Home
    - Continuing Care Retirement Centers (CCRCs) and long-term care facilities with greater than 88% Medicaid occupancy
  - Current tax rate is $13.75 per patient (bed) days (to collect 5.5% of annual gross revenue of all long-term care facilities in the state)
  - $77 million OF revenue for 2007-2009 biennium.
  - Potential matching Federal Funds = $123 million.

    Note: Provider tax dollars are matched the same way GF is matched for Medicaid purposes.

Recent Federal Law Changes

- The Deficit Reduction Act of 2005 (DRA) (Pub. L. 109-171) amended the Social Security Act (SSA) to require all managed care organizations to be taxed, not just Medicaid managed care plans. The law allows states such as Oregon to continue its Medicaid managed care tax until October 1, 2009.
  - As a result, the Oregon legislature set an October 1, 2009 sunset date for the Medicaid managed care tax.

- The Tax Relief and Health Care Act of 2006 (Pub. L. 109-432) amended the SSA to set a temporary reduction in the allowable amount that can be collected from a health care related tax from 6 to 5.5 percent. The reduction limit began January 1, 2008, and ends October 1, 2011.
    - As a result of this law, the Medicaid managed care tax and the long-term care facility tax rates were adjusted January 1, 2008, to 5.5 percent.

Changes in Federal Regulations

- On February 22, 2008, CMS published provider tax rules to codify the federal law changes listed above but to also "clarify the standards for determining the existence of a hold harmless agreement."

- Although the changes to "clarify" standards appeared to be modest, CMS indicated it will apply the hold harmless policies more stringently by exercising more flexibility in determining a positive relationship between provider taxes and reimbursement payments.

- As a result, states operating provider tax programs will be subject to greater CMS scrutiny.

Internal Management Strategy: DHS should ensure appropriate policies and procedures are in place and in practice to limit possible audit findings. This is very pertinent to the hold harmless policies and practices. The applicable provider tax rates have been implemented by DHS.

Legal Strategy: DHS could choose to file suit against CMS based on the broad based application of provider taxes.

Political Strategy: Discussion to be held during the 2009-11 legislative session on possible proposals to eliminate or expand Managed Care Organization provider taxes.

Contact: Mary Alexander 503-947-5101

AUDIT FINDINGS

Temporary Assistance for Needy Families (TANF) Emergency Assistance (EA) Redetermination

Background: The TANF EA program provides services to children involved with CAF CW while in the home of the parent and while in substitute care placements. DHS currently does not conduct annual redeterminations of TANF EA eligibility. The Administration for Children and Families (ACF) conducted an audit and provided clarification regarding annual redeterminations for TANF EA children. This will reduce TANF EA eligibility and reduce Federal financial participation for these children.

Impacted Division(s)/Agency: CAF and Administrative Services Division (ASD)

Estimated TANF Federal Loss: From $30.0 to $38.3 million Federal Funds for CAF and up to $1.1 million Federal Funds for ASD (This amount represents February 1, 2008 through June 30, 2009)

Internal Management Strategy: DHS has developed a series of management actions to address this issue including identification of revenue shifts and expenditure reductions.

Contact: Julie Strauss 503-945-5756

DEPARTMENT OF HUMAN SERVICES (DHS)
FEDERAL REGULATION ANALYSIS & AUDIT FINDINGS
UPDATED MAY 30, 2008

Personal Care (PC) Medicaid - CAF

Background: For some children with higher needs, CAF provides "special rates" that include Medicaid Personal Care. CMS has issued findings stipulating Medicaid is not appropriate for behavioral management and has made full disallowance on this basis.

Impacted Division(s)/Agency: CAF

Estimated Federal Medicaid Loss: Up to $48.6 million Federal Funds for CAF (This amount represents January 1, 2005 through June 30, 2009)

Audit Period: Calendar year 2005.

Internal Management Strategy: CAF CW has formed a workgroup to investigate and offer alternatives to the current special rate program.

Legal Strategy: DHS has filed notice to appeal the Child Welfare decision by DHHS and will attempt to ameliorate this disallowance. At this time, DHS is awaiting a decision on this appeal. This appeal is classified as a higher risk as negotiations will be difficult.

Contact: Julie Strauss 503-945-5756

Personal Care (PC) Medicaid - AMH

Background: AMH claims Personal Care for individuals residing in community residential placements. CMS, in a review conducted based on Calendar Year 2005 expenditures, has questioned the rate methodology employed to calculate these claims. Although no final report has been received, CMS has deferred Medicaid claims for these expenditures and has verbally indicated the intent to disallow these claims.

Impacted Division(s)/Agency: AMH

Estimated Federal Medicaid Loss: Up to $144 million Federal Funds for AMH. (This amount represents January 1, 2005 through June 30, 2009)

Audit Period: Calendar year 2005.

Internal Management Strategy: At this time DHS is awaiting the financial management review report. DHS classifies the anticipated review findings as lower risk, because resolution is expected to be mutually acceptable.

Contact: Julie Strauss 503-945-5756