

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Mells</i>	DATE <i>1-11-08</i>
--------------------	------------------------

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000367</i>	<input checked="" type="checkbox"/> Prepare reply for the Director's signature DATE DUE <i>1-28-08</i>
2. DATE SIGNED BY DIRECTOR <i>cc: Ms. Forkner, Dep Cleared 2/14/08 letter attached.</i>	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____ <input type="checkbox"/> FOIA DATE DUE _____ <input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

Log: Wells
cc: Ms. Forkner
D. Duggan
Dir. Segar

FAX COVER

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HON. HENRY A. WAXMAN

CHAIRMAN

2157 RAYBURN HOUSE BUILDING

PHONE (202) 225-5051

FAX (202) 225-4784, 8185

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JAN 17 2008

Department of Health & Human Services
OFFICE OF THE DIRECTOR

DATE: January 16, 2008

TO: Ms. Emma Forkner

FAX: (803) 255-8235

FROM: Rep. Henry A. Waxman

SUBJECT:

NO. OF PAGES: 8 (INCLUDING COVER SHEET)

COMMENT:

IF THERE IS A PROBLEM WITH THIS
TRANSMITTAL, PLEASE CALL OFFICE A.S.A.P.

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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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JAN 17 2008

January 16, 2008

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Ms. Emma Forkner
Director
Department of Health & Human Services
P.O. Box 8206
1801 Main Street
Columbia, SC 29202-8206

Dear Ms. Forkner:

The Committee on Oversight and Government Reform has undertaken an investigation of the Administration's regulatory actions on Medicaid. On November 1, 2007, the Committee held a hearing on this subject that focused on six regulations proposed during the past year: cost limits for public providers (CMS 2258-FC), payment for graduate medical education (CMS 2279-P), payment for hospital outpatient services (CMS 2213-P), provider taxes (CMS 2275-P), coverage of rehabilitative services (CMS 2261-P), and payments for costs of school administrative and transportation services (CMS 2287-P). Since the hearing, the Administration issued an interim final rule on targeted case management (CMS-2237-IFC).

Centers for Medicare and Medicaid Services (CMS) has provided an estimate of the reduction in federal Medicaid payments to states that each of its proposals would achieve. Those estimates are national, not state-specific: in total, the proposed regulations would reduce federal Medicaid payments to states by over \$12 billion over the next five years. At the hearing, the National Association of State Medicaid Directors testified that implementation of these proposals "will only make life harder for the millions of poor Americans."

As part of its investigation, the Committee is attempting to quantify the impact that these proposals will cause for states and for beneficiaries. Despite a request from the Committee, CMS has not provided a state-by-state analysis of the effect of each of these proposals. In a federal-state program as large as Medicaid, where the effects can vary significantly by state, the lack of a state-by-state impact analysis makes it harder for federal or state policymakers—and the public—to understand what is being proposed.

To assist the Committee and the public in understanding the state-specific impact of each of the six proposals, I request that you submit an analysis of the impact of each of the proposed

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Ms. Emma Forkner
January 16, 2008
Page 2

To assist the Committee and the public in understanding the state-specific impact of each of the six proposals, I request that you submit an analysis of the impact of each of the proposed rules listed above. This analysis should include, for each proposal, an estimate of the expected reduction in federal Medicaid funds to your state over each of the next five years and an estimate of the effect of this reduction on Medicaid applicants and beneficiaries in your state.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides additional information about how to respond to the Committee's request.

Please submit all of these materials to the Committee by February 15, 2008. If you have any questions regarding this request, please feel free to contact Andy Schneider of the Committee staff at (202) 225-5056.

Sincerely,

Wm A. Waxman

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

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Congress of the United States

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ONE HUNDRED TENTH CONGRESS

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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In responding to the document request from the Committee on Oversight and Government Reform, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information.
10. The Committee accepts electronic documents in lieu of paper productions. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page TTF files accompanied by a Concordance-format load file, an Opicon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates Numbers and TTF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
11. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
12. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject, and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
13. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
14. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
15. All documents should be bates-stamped sequentially and produced sequentially. In the cover letter, you should include a total page count for the entire production, including both hard copy and electronic documents.

16.

Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set should be delivered to the minority staff in Room B350A in the Rayburn House Office Building. You should consult with committee staff regarding the method of delivery prior to sending any materials.

17.

Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner of means of disclosure or exchange of information, regardless of means utilized, where oral, electronic by document or otherwise, and whether fact-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, division, departments, joint ventures,

propriatorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR**

ACTION REFERRAL

TO <i>Mells</i>	DATE <i>1-11-08</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000367</i>	<input checked="" type="checkbox"/> Prepare reply for the Director's signature DATE DUE <i>1-28-08</i>
2. DATE SIGNED BY DIRECTOR <i>cc: Ms. ForKner, Dept</i>	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

	APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.				
2.				
3.				
4.				



State of South Carolina
Department of Health and Human Services

Reg 0367 ✓

Mark Sanford
Governor

Emma Fortner
Director

February 14, 2008

The Honorable Henry A. Waxman
Chairman
United States House of Representatives
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Representative Waxman:

Thank you for your letter of January 16, 2008, which requests an analysis of the impact of six regulations proposed by the Centers for Medicare and Medicaid Services (CMS) over the past year on South Carolina. Our analysis is as follows:

CMS 2258-P, Cost Limits on Public Providers: We do not believe this regulation will have a significant impact on Federal funds, applicants or beneficiaries in South Carolina. Most of the South Carolina Medicaid reimbursement methodologies already limits reimbursement for public providers to no more than cost. We already require cost reports to be submitted by public providers which are used to verify any Certified Public Expenditures being claimed as state match and that their payments do not exceed cost.

CMS 2279-P, Payment for Graduate Medicaid Education: This proposed regulation would potentially reduce Federal Medicaid funds paid to South Carolina hospitals by approximately \$62 million annually. There would be no direct impact on the number of applicants or beneficiaries, although there could be a negative impact on access to some hospital services.

CMS 2213-P, Payment for Hospital Outpatient Services: We believe that South Carolina's current outpatient reimbursement methodology is substantially in compliance with this proposed regulation, and therefore it would not have a significant impact on Federal Medicaid funds, applicants or beneficiaries in South Carolina. Our concerns about this regulation are more procedural in nature in terms of the need for CMS to provide more clarification on how the new methodology would be applied and allowing a sufficient time for us to make necessary system changes.

The Honorable Henry A. Waxman
February 14, 2008
Page Two

CMS 2275-P, Provider Taxes: We believe that South Carolina's current provider taxes would be substantially in compliance with the proposed rule and therefore we do not think it would not have a significant impact on Federal funds, applicants or beneficiaries in South Carolina. Our concerns about this regulation are more procedural in nature in terms of how the broader hold harmless provision would be applied and the need for further clarification of the definition of ICF-MR facilities.

CMS 2261-P, Coverage of Rehabilitative Services: This proposed regulation would potentially reduce Federal Medicaid funds paid to South Carolina by \$18 million annually. This could have a negative impact on access to these services for beneficiaries, depending on whether the State decides to replace these Federal funds with state funds.

CMS 2287-P, Payments for Costs of School-Based Administrative and Transportation Services: This proposed regulation would potentially reduce Federal Medicaid funds paid to South Carolina by \$9.5 million annually. This could have a negative impact on access to these services for beneficiaries, depending on the extent to which the State absorbs these costs within the education budget.

We hope this information is helpful to the Committee. If you have any questions please contact William Wells, Deputy Director of Finance and Administration at (803) 898-2503.

Sincerely,

A handwritten signature in dark ink, appearing to read "Emma Forkner", written in a cursive style.

Emma Forkner
Director

EF/wh