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February 15, 2008

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

Re: Response to House Committee on Oversight and Government Reform request on the impact of proposed Medicaid regulations on the Commonwealth of Massachusetts

Dear Representative Waxman:

The Commonwealth of Massachusetts appreciates the opportunity to submit information on the impact that the seven Medicaid regulations proposed by the Administration over the past year would have on the state and the beneficiaries we serve. We are very concerned that these regulations, which shift costs for crucial Medicaid services from the federal government to the states and which, in many cases, surpass Congressional intent, will hurt states' abilities to care for our sickest and most vulnerable residents.

Below are our projections of the effect of each regulation on Massachusetts and our MassHealth members. In some cases, the proposed regulations are unclear and leave outstanding questions so we cannot definitively ascertain the effect of each rule, but we have utilized the information available at this time to provide our best estimate of the fiscal and member impacts of each regulation. The lack of clarity in these rules also makes it impossible to measure the cumulative effect that these rules will have on many of our beneficiaries. While the Commonwealth has no current plans to reduce services or limit eligibility, substantial reductions in federal funding could lead to these or other undesirable outcomes for our program and our members.

## **Fiscal and Member Impacts of the Medicaid Regulations**

### **Cost limits for public providers (CMS 2258-FC)**

Estimate of the expected reduction in federal Medicaid funds to the state over each of the next five years:

This regulation would limit each governmental provider to Medicaid reimbursement that does not exceed its costs of providing Medicaid services to eligible Medicaid recipients. The Commonwealth is concerned that this could limit the availability of federal reimbursement by redefining what may be considered allowable expenditures. This regulation appears to give the Secretary broad authority to identify allowable costs. Unfortunately, without knowing precisely how CMS will define allowable costs under this regulation, it is not possible to estimate the potential loss in federal reimbursement to Massachusetts at this time.

Estimate of the effect of this reduction on Medicaid applicants and beneficiaries in the state:

Massachusetts does not believe that this rule will have a direct impact on beneficiaries but, to the extent that providers have to adjust their practices to absorb this potential loss of revenue, quality of or access to services could be compromised.

### **Payment for graduate school education (CMS 2279-P)**

Estimate of the expected reduction in federal Medicaid funds to the state over each of the next five years:

	<b>FY2009</b>	<b>FY2010</b>	<b>FY2011</b>	<b>FY2012</b>	<b>FY2013</b>	<b>Total</b>
Projected Loss in Medicaid Federal Financial Participation (\$ mil)	\$21.1	\$22.9	\$22.9	\$23.8	\$24.7	\$115.4

Estimate of the effect of this reduction on Medicaid applicants and beneficiaries in the state:

Massachusetts does not believe that this rule will have a direct impact on beneficiaries but, to the extent that providers have to adjust their practices to absorb this potential loss of revenue, quality of or access to services could be compromised.

**Payment for hospital outpatient services (CMS 2213-P)**

Estimate of the expected reduction in federal Medicaid funds to the state over each of the next five years:

Due to the lack of clarity in the proposed rule, we are unable to estimate the fiscal impact. Depending on the actual intent of CMS under this rule with respect to the mechanism for calculating upper payment limits (the ceiling for Medicaid payments based on what Medicare would have paid), however, the impact could be significant.

Estimate of the effect of this reduction on Medicaid applicants and beneficiaries in the state:

Massachusetts does not believe that this rule will have a direct impact on beneficiaries but, to the extent that providers have to adjust their practices to absorb this potential loss of revenue, quality of or access to services could be compromised.

**Provider taxes (CMS 2275-P)**

Estimate of the expected reduction in federal Medicaid funds to the state over each of the next five years:

None

Estimate of the effect of this reduction on Medicaid applicants and beneficiaries in the state:

None

**Coverage of rehabilitative services (CMS 2261-P)**

Estimate of the expected reduction in federal Medicaid funds to the state over each of the next five years:

For nearly twenty years Massachusetts has been providing day habilitation services under a grandfathered state plan, pursuant to Section 6411(g) of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89). CMS maintains that this regulation will eliminate that grandfathered authority.

If this rule becomes final, federal reimbursement would no longer be available for day habilitation services under a state plan.

	FY2009	FY2010	FY2011	FY2012	FY2013	Total
Total Day Habilitation Program Costs (federal and state, \$ mil)	\$129.3	\$137.9	\$153.0	\$163.2	\$181.1	\$764.4

While we believe this rule will also have a fiscal impact on additional rehabilitative services, lack of clarity in the proposed rule makes it impossible for us to estimate that impact.

Estimate of the effect of this reduction on Medicaid applicants and beneficiaries in the state:

This proposed regulation limits the state's authority to serve members in the community and outside of institutional settings. Massachusetts is concerned that this rule would (1) require individuals with chronic, disabling mental health or substance abuse conditions who cannot continue to show annual "reduction in disability" to discontinue community based services, (2) limit reimbursement for community based services to individuals with mental retardation and related conditions, and (3) limit reimbursement for services provided to children in the child welfare or juvenile justice systems.

Payments for costs of school administrative and transportation services (CMS 2287-P)

Estimate of the expected reduction in federal Medicaid funds to the state over each of the next five years:

Below is an estimate of the Federal Financial Participation that will no longer be available to Massachusetts once this regulation is enacted.

	<b>FY2009</b>	<b>FY2010</b>	<b>FY2011</b>	<b>FY2012</b>	<b>FY2013</b>	<b>Total</b>
Projected Loss in Medicaid Federal Financial Participation (\$ mil)	\$47.3	\$48.0	\$48.7	\$49.4	\$50.2	\$246.6

Estimate of the effect of this reduction on Medicaid applicants and beneficiaries in the state:

Massachusetts is concerned that this regulation will impede the Commonwealth's ability to connect children to needed services. Massachusetts believes that schools are an efficient and effective way to reach children and their families in order to provide appropriate access to Medicaid. Because of their role in the lives of children, schools are uniquely situated to reach children in need. Since school staff often have an existing relationship with families, they are a natural conduit for providing families with information on the Medicaid program and with assistance with the Medicaid application process. For example, a trusted teacher may be more able to explain to a parent the benefits of enrolling in a Medicaid program than an unknown state official. Additionally, as schools provide Medicaid covered services to children receiving Special Education, school personnel should be involved in planning and coordinating service delivery. School nurses, who may see children on a daily basis, are often in the best position to ensure health care services by the school are delivered in a coordinated manner. Additionally, because of their medical training, school nurses are often best situated to reach out to children's primary health care providers. These outreach and coordination services are the backbone of school based Medicaid administrative activities and should be provided by and in the schools.

**Targeted case management (CMS 2237-IFC)**

Estimate of the expected reduction in federal Medicaid funds to the state over each of the next five years:

Below is an estimate of the loss of Federal Financial Participation for case management services provided to children whose targeted case management (TCM) services are currently provided by the Commonwealth's social service agency or the juvenile justice system.

	<b>FY2009</b>	<b>FY2010</b>	<b>FY2011</b>	<b>FY2012</b>	<b>FY2013</b>	<b>Total</b>
Projected Loss of Medicaid Federal Financial Participation (\$mil)	\$54.6	\$56.0	\$56.9	\$57.8	\$58.7	\$284.0

This estimate does not include additional, and substantial, costs for retooling existing case management programs to comply with operational requirements dictated by this regulation. For example, the Commonwealth and its providers will need to:

- Develop or update billing systems in order to bill in increments not to exceed 15 minutes,
- Develop or update case note systems and methodologies in order to maintain and retain, individual service plans that meet the new requirements described in the regulations,
- Develop new methodologies to ensure that individuals are never served by more than one case manager, and
- Develop and train direct service staff on policies related to these new regulations

We believe that effective coordination of our members' care helps Massachusetts control overall costs as well as provide better care. To the extent that this rule hinders our ability to coordinate care there is a risk of increased cost although we are unable to quantify the costs at this time.

Estimate of the effect of this reduction on Medicaid applicants and beneficiaries in the state:

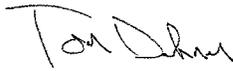
The Commonwealth believes that the individuals who have the most expertise and training concerning the special needs of children who are clients of the child welfare system or juvenile justice system are the individuals who work within the child welfare or juvenile justice system. The Commonwealth is concerned that this interim final rule will arbitrarily prohibit the most expert and qualified providers from delivering Medicaid TCM services to the population that would most benefit from the particular expertise of those individuals.

The Commonwealth is also concerned that a number of elements of this proposed regulation may make access to TCM services more difficult. By insisting that individuals may only have one case manager at a single point in time, this interim rule fails to consider the complexity of care needed by individuals with complex medical needs. For example, a child with a mental illness who is also HIV positive would not be able to have a case manager with expertise in accessing services for children with mental illness as well as a case manager who has specific knowledge of issues for those living with HIV and AIDS. The undue burden resulting from the requirement to bill in 15-minute increments may discourage qualified providers from participating in the Medicaid program. Similarly, limitations on reimbursement for transitional case management

services may discourage providers from providing services to members preparing to leave institutional settings.

Massachusetts appreciates the concern you have shown for the states and Medicaid beneficiaries by undertaking this investigation. Please let us know if there is any additional information that you need or if you have any questions regarding our response to this request. We appreciate all that the Committee on Oversight and Government Reform is doing to ensure that Medicaid beneficiaries get the care and services they need.

Sincerely,

A handwritten signature in black ink that reads "Tom Dehner". The signature is written in a cursive, slightly slanted style.

Tom Dehner  
Medicaid Director

cc: The Honorable Tom Davis, Ranking Minority Member  
U.S. House of Representatives, Committee on Oversight and Government Reform