CLASP

CENTER FOR LAW AND SOCIAL POLICY

June 1, 2009

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2287-P2
P.O. Box 8010
Baltimore, MD 21244-8010

RE: File Code CMS-2287-P2
Proposed Rule: Medicaid Program; Rescission of School-Based Services Final Rule, Outpatient Services Definition Final Rule, and Partial Rescission of Case Management Services Interim Final Rule, 74 Fed. Reg. 86 (May 6, 2009)

To Whom It May Concern:

I am writing on behalf of the Center for Law and Social Policy (CLASP) to offer our support for the proposed rule issued on May 6, 2009 (CMS-2287-P2) to rescind certain provisions of the interim final rule regarding Medicaid optional state plan case management services issued on December 4, 2007 (CMS-2237-IFC). We share your concern that the provisions included in CMS-2237-IFC would unduly restrict beneficiary access to critical services and encourage that they be rescinded.

CLASP develops and advocates for policies at the federal, state and local levels that improve the lives of low income people. We focus on policies that strengthen families and create pathways to education and work. One component of this work involves advocacy on behalf of children who are involved with or at risk of becoming involved with the child welfare system. Thus, we are very supportive of the proposed partial rescission of the case management services interim final rule and believe that the rescission will help ensure that abused and neglected children receive critical case management services.

We offer comments in regards to the scope and nature of potential problems that would result if provisions in CMS-2237-IFC pertaining to optional state plan case management services were implemented, specifically as related to children and youth involved with the child welfare system.

§ 441.18(c) Direct delivery of underlying services and activities integral to the administration of other programs

The Deficit Reduction Act of 2005 (DRA) statutorily excluded from the definition of case management services those activities that constitute the direct delivery of underlying services to which an eligible individual has been referred (something previously prohibited in guidance). CMS-2237-IFC went further and excluded from the definition of case management activities those that "are integral to the administration of foster care programs". This exclusion, coupled with language in the preamble of CMS-2237-IFC that suggested that any services provided by child welfare workers or contractors are not reimbursable under Medicaid created a false and unnecessary distinction between child welfare and Medicaid services that may threaten access to critical services. Case management activities are often integral to multiple programs; the exact same activities can be necessary to achieve the objectives of multiple programs – both Medicaid and child welfare, for example. Certainly States should not bill both Medicaid and Title IV-E for the same service. Rather, it is appropriate to consider whether the activity constitutes only Medicaid case management, only child welfare case management or both and then allocate costs accordingly. The rescission of this provision allows for appropriate cost allocation for those case management services that constitute and benefit more than one program, recognizing that the effective and efficient administration of both child welfare and Medicaid require case management services. We therefore urge you to rescind this language and amend as proposed in CMS-2287-P2.

§ 441.18(a)(5) Requirement for single case manager

CMS-2237-IFC would have required that case management services be delivered through a single case manager arguing that this would promote efficient coordinated services delivery. We believe nothing in the DRA authorizes CMS to limit case management services in this way and believe requiring a single case manager could result in the provision of less comprehensive, holistic services, contrary to the goal of case management.

Individuals needing case management services often have complex medical needs. A child in foster care may have, for example, developmental delays, chronic physical health problems such as asthma or HIV and chronic mental health problems such as post-traumatic stress disorder, depression, or attention deficit disorder. It is highly unlikely that a single individual will be knowledgeable enough to assess the service needs for each of these challenges, develop an appropriate care plan and implement and monitor that plan. CMS-2237-IFC failed to acknowledge this reality and we support rescinding the requirement that services be provided through one case manager. However, case management will be most effective when it leads to the provision of comprehensive, coordinated services. We therefore encourage you to retain the language about providing "comprehensive case management services, on a one-to-one basis".

§ 441.18(a)(8)(vi) Methodologies for calculating payment rates

Under CMS-2237-IFC service providers would have been required to bill for case management in a fee-for-service manner, in increments of no more than 15 minutes, arguing that case management services can involve brief contacts. CMS-2237-IFC would have prohibited the bundling of case management and other services on a capitated basis, in which

a medical provider is given a single payment to provide a range of services, including case management, to address an individual's needs without having to keep track of how many minutes were spent on each particular service. With capitated billing mechanisms, service providers can focus on actually providing needed services rather than documenting each tiny increment of service provided. This is not to say that bundled, capitated rates should be arbitrary and unrelated to actual service provision. There are recognized rate setting methodologies that accurately capture costs within a capitated, bundled rate and as long as a provider is using a methodology approved by CMS, there is no reason to require the approach set forth in CMS-2237-IFC. We support rescinding the requirement that case management services rates be calculated based on "a unit of service that does not exceed 15 minutes" and believe it will help ensure that service providers can focus on providing services rather than documenting each tiny increment of service in an effort to comply unnecessary and inefficient billing mechanisms.

CLASP appreciates your consideration of our comments and would be happy to discuss further any of our concerns and recommendations. We appreciate your efforts to ensure access to case management services for children and other vulnerable groups.

Sincerely,

Tiffany Conway
Child Welfare Policy Analyst