

Bobby Jindal
GOVERNOR



Bruce D. Greenstein
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

February 1, 2011

The Honorable Joel T. Chaisson, II, President
Louisiana State Senate
P.O. Box 94183, Capitol Station
Baton Rouge, LA 70804-9183

The Honorable Jim Tucker, Speaker
Louisiana State House of Representatives
P.O. Box 94062, Capitol Station
Baton Rouge, LA 70804-9062

The Honorable Kay Katz, Chairwoman
House Health and Welfare Committee
Louisiana State House of Representatives
P.O. Box 44486, Capitol Station
Baton Rouge, LA 70804-4486

The Honorable Willie L. Mount, Chairwoman
Senate Health and Welfare Committee
Louisiana State Senate
P.O. Box 94183, Capitol Station
Baton Rouge, LA 70804-9183

Dear President Chaisson, Speaker Tucker, and Honorable Chairs:

In response to Senate Resolution No. 152 and House Resolution No. 176 (SR 152 and HR 176) of the 2010 Regular Session, the Louisiana Department of Health and Hospitals (DHH) submits the enclosed report. The resolutions ask that DHH study the impact of the Patient Protection and Affordable Care Act on Louisiana-based community mental health centers and report the findings and conclusions of the study to the House and Senate Committees on Health and Welfare. R.S. 24:772 also requires that the report be submitted to the President of the Senate and the Speaker of the House.

DHH is available to discuss the enclosed report and recommendations with you at your convenience. Please contact Kathy Kliebert, DHH deputy secretary, at (225) 342-7092 with any questions or comments you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce D. Greenstein".

Bruce D. Greenstein
Secretary

Enclosures

Cc: The Honorable Members of the House Health and Welfare Committee
The Honorable Members of the Senate Health and Welfare Committee
David R. Poynter Legislative Research Library

IMPACT OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT ON LOUISIANA-BASED COMMUNITY MENTAL HEALTH CENTERS

REPORT PREPARED IN RESPONSE TO SR 152
& HR 176 OF THE 2010 REGULAR SESSION

JANUARY 2011

Contact:

Louisiana Department of Health and Hospitals
Kathy Kliebert
Deputy Secretary
628 N. 4th St. Baton Rouge, LA 70802
225.342.7092
Kathy.Kliebert@la.gov

EXECUTIVE SUMMARY

The Patient Protection and Affordable Care Act (PPACA) includes a provision which requires entities designated as Community Mental Health Centers (CMHC) to provide forty percent (40%) of their services to non-Medicare recipients in order to meet the new definition of a CMHC beginning April 1, 2011. CMHC providers petitioned the Legislature for relief and the resulting resolutions, SR 152 by Senator McPherson and HR 176 by Representative Nowlin, requested the Department of Health and Hospitals (DHH) to conduct a study to determine the role CMHCs should play in implementing comprehensive behavioral health services within the state, the projected costs of various options to expand CMHC participation in the Medicaid program and any actions necessary to assure CMHCs meet the new Medicare requirements.

REPORT TO THE LEGISLATURE

BACKGROUND

Effective July 1, 2008 Medicaid began accepting enrollment of Medicare Certified Community Mental Health Centers (CMHC) for the adjudication of Medicare partial hospitalization crossover claims. Medicaid's reimbursement rates for these claims is 80% of the Medicare rate, therefore these claims for services, which are provided to patients who are dually eligible for Medicare and Medicaid, are paid at zero. Thus, the only cost to DHH is the payment to the fiscal intermediary for claims processing. Recently enacted federal legislation requires CMHCs to increase their non-Medicare services until each CMHC provides at least forty percent of its services to individuals who are not eligible for benefits under Medicare. The deadline of April 1, 2011 presents a daunting challenge to Louisiana's CMHCs, since Medicare recipients currently comprise an estimated ninety percent of the patient base of CMHCs. The Louisiana Association of Behavioral Health (LABH), which represents many CMHCs, is awaiting further CMS guidance which might clarify whether the forty percent will be calculated in terms of the number of non-Medicare patients compared to Medicare patients or the dollar value of services provided. It is not known if further explanation and details will be made available prior to April 1. If the current rules and coverage policies are changed and CMHCs are allowed to bill Medicaid, there will be a significant negative impact on the existing large Medicaid budget deficits for FY10 and FY11.

ABOUT COMMUNITY MENTAL HEALTH CENTERS

There are approximately fifty-seven (57) Medicare-certified CMHCs, fifty (50) of which are currently enrolled in Medicaid. According to the Centers for Medicare and Medicaid Services (CMS) Center for Program Integrity, Louisiana CMHCs consistently account for approximately one-fourth of all Medicare dollars paid to CMHCs nationwide. In SFY 10, the Medicaid enrolled CMHCs served 3,080 Medicaid recipients who were also eligible for Medicare, representing \$174.1 million in Medicare billed charges. CMS states that from 2005 through the third quarter of 2010, Medicare paid over \$306 million to CMHCs in Louisiana. Louisiana has more CMHCs than any other state in the nation. Twenty-five states have no CMHCs. CMHCs provide medication management, individual, group and family therapy, and other related services to persons with mental illness. In addition, they provide partial hospitalization services, which in fact are clinic-based services where an individual receives services throughout the day in the clinic. CMHCs employ various licensed professionals including physicians, psychologists, nurses, social workers and professional counselors. Services are provided exclusively in a clinic setting, mainly to adults, but also to some children.

CMHC providers have for several years requested the ability to bill Medicaid and receive reimbursement in the same manner as existing mental health clinics operated by the State and local governing entities. Members of the LABH have met with DHH staff on numerous occasions, both prior to and during the 2010 Legislative Session, to discuss how this might be accomplished. A statutory moratorium prohibited CMHC enrollment in Medicaid until July 1, 2008. The statutory moratorium is no longer in place, but Executive Order BJ 08-24 prohibits enrollment of CMHCs in Medicaid, except for adjudication of Medicare crossover claims, until licensing rules are published.

According to CMS, CMHCs have been a consistent target of investigation for fraud, waste, and abuse of the Medicare program nationwide. In Louisiana, AdvanceMed has performed twenty-eight investigations on twenty-two unique CMHCs that have resulted in thirteen referrals to law enforcement and the

identification of over \$40 million in Medicare overpayments (with no convictions). CMS has been concerned with several characteristics of certain CMHC practices, such as solicitation of patients in vulnerable populations using incentives such as: free meals, room and board, and transportation; payment for care of questionable value; and payment for care initiated by parties with a financial interest in the CMHC providing the services. Because of this history of Medicare fraud, many states do not allow Medicaid enrollment of CMHCs. Louisiana is one of twenty-four states that allows Medicaid enrollment.

PPACA MANDATE AND POTENTIAL IMPACT ON LOUISIANA MEDICAID

The Health Care and Education Reconciliation Act of 2010 (HCERA), which is part of PPACA, included Subtitle D, entitled “Reducing Fraud, Waste, and Abuse”. Section 1301 is part of this Subtitle and redefines a community mental health center in part as an entity that “provides at least forty percent of its services to individuals who are not eligible for benefits” under Medicare.

On May 20, 2010, representatives from the CMS Medicaid Program Integrity Group met with Medicaid staff from Louisiana, Texas, and Florida – the three states with the highest number of CMHCs – to express concern that CMHC providers may increase Medicaid participation as a result of these new requirements of PPACA. Unless safeguards are put in place, difference in Medicare and Medicaid billing practices could result in duplication of services with other mental health providers. CMS’s recommendation was that Medicaid reimbursement of CMHC services should entail strict program criteria and be accompanied by robust oversight and monitoring. Current Medicaid staffing levels are not sufficient to support these activities.

As stated above, Medicaid is facing an unprecedented budget crisis for the foreseeable future, just as PPACA is projected to drastically increase Medicaid enrollment in 2014. Considering the relatively small number psychiatrists and psychologists who currently serve the Medicaid population and the large number of Louisiana’s parishes that have been designated as mental health professional shortage areas, it is expected that access to mental health services will be a concern. CMHC providers are dispersed across most geographic areas of the state and could help fill service gaps. However, no additional funding has been appropriated to cover CMHC costs, which are expected to represent a substantial increase in mental health expenditures, as well as administrative costs. In addition, policies and procedures will need to be put in place to ensure proper oversight on the scope and quality of services provided by CMHCs.

A major collaborative effort between DHH, the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice, called the Coordinated System of Care (CSoC) is currently underway to transform the manner in which mental health and substance abuse services are delivered and funded. The driving influence behind developing a coordinated system of care was the recognition of the major deficiencies in Louisiana’s system of care for children and youth. In the process of developing the system of care for at-risk children, DHH recognized opportunities for developing a similar system of care for adults and all children in need of behavioral health services, which includes both addictive disorders and mental health services. These improvements will increase access to Medicaid services, increase the use of high-quality, evidence-based practices, maximize use of state general funds by blending funding streams across multiple state agencies, and manage utilization of services to ensure the frequency, intensity, duration and amount of services are clinically appropriate. Any efforts to allow Medicaid reimbursement of CMHCs must align with the Coordinated System of Care (CSoC).

ACTION TAKEN

Representatives of the LABH, mental health advocates, and DHH staff met on November 4, 2010 to continue discussions regarding CMHCs' place in the Medicaid continuum of care. A workgroup of 10 individuals reviewed both the state and federal legislation and discussed ways for CMHCs to participate in Medicaid. Key issues brought forth by various members of the workgroup are listed below.

KEY POINTS

- The early implementation date (April 1, 2011) for the new CMHC 40% requirement presents major challenges related to funding, absence of CMS guidance and the need for Medicaid State Plan changes.
- If CMHCs are allowed to bill Medicaid for more than the dual-eligible cross-over claims, the changes to the Medicaid State Plan would allow CMHC physicians, psychologists, nurses, social workers and professional counselors to bill Medicaid for many of the services they currently provide, but these changes are not scheduled for implementation prior to April 1, 2011.
- DHH plans to contract with a Statewide Management Organization which will: credential providers; authorize services; and provide utilization management, monitoring and quality management for all behavioral health services. However, this contract will not be in place by April 1, 2011.
- CMHC providers may begin closing as early as January 2011 or by April 2011 because they believe they cannot meet the new 40% case mix federal requirement. Some may continue to operate and be out of compliance with the new regulations.
- CMHC providers may currently enroll in Medicaid as Mental Health Rehabilitation (MHR) providers if they meet the provider enrollment criteria. However, if all 57 CMHCs enrolled, this would nearly double the number of MHR providers, completely overwhelming the capacity of current staff to adequately monitor and manage the provider network and authorize services timely. MHR provider payment expenditures, already greater than anticipated for FY10, would significantly increase.
- Enrolling CMHC providers as mental health clinics would require promulgation of updated licensing regulations, as well as professional service contracts related to cost report audits, licensing inspections and development of reimbursement methodology. DHH's Bureau of Health Standards does not have the administrative capacity to begin licensing these providers, especially within the time constraints. Again, the April 1 deadline and the necessity of providing adequate prior authorization and program oversight present challenges.
- Current trends in behavioral health, both in Louisiana and across the nation, focus on evidence-based services provided in homes, schools and other community locations rather than clinic-based services such as CMHCs currently provide. The planned service array for the new Coordinated System of Care does not include partial hospitalization, a major service provided by CMHCs.

FISCAL IMPACT

If CMHCs are allowed to bill Medicaid, there will be a major fiscal impact, which is still being analyzed by actuaries under contract to DHH. Estimates prepared during the legislative session ranged from \$37.6 million to \$108.4 million based on various scenarios which would allow CMHCs to be enrolled and reimbursed under current mental health clinic policies. Utilizing FY10 data regarding average provider payments, it is estimated enrollment of CMHCs as MHR providers would cost approximately \$31,070,928 in provider payments alone.

CONCLUSION

The inclusion of CMHCs as Medicaid providers should be carefully reviewed for potential fiscal impact on Medicaid's budget, the quality of care provided, and the potential for continuing risks of fraud and abuse before any changes to current rules and regulations are implemented.

Regular Session, 2010

HOUSE RESOLUTION NO. 176

BY REPRESENTATIVE NOWLIN

A RESOLUTION

To urge and request the Department of Health and Hospitals to study the impact of the Patient Protection and Affordable Care Act on Louisiana-based community mental health centers and to report the findings and conclusions of the study to the House Committee on Health and Welfare by January 1, 2011.

WHEREAS, the Patient Protection and Affordable Care Act, hereinafter referred to as the "Act", provides that beginning April 1, 2011, in order to meet the definition of a community mental health center, forty percent of the services delivered by such a facility must be provided to non-Medicare recipients; and

WHEREAS, Louisiana's community mental health centers currently serve a Medicare insured clientele that receives approximately ninety percent of the total services of these centers and generates in excess of eighty-five million dollars for our state's economy; and

WHEREAS, in the event that Louisiana's community mental health centers cannot meet the forty percent threshold mandated by the Act, that funding could be substantially reduced or lost entirely; and

WHEREAS, the Act also expands Medicaid eligibility income limits to one hundred and thirty-three percent of the federal poverty level beginning in 2014; and

WHEREAS, the Department of Health and Hospitals estimates this change in eligibility criteria may add as many as six hundred thousand Louisiana residents to the Medicaid program, meaning that almost forty percent of our population will be insured by Medicaid, making it virtually impossible for Louisiana-based community mental health centers to meet the payor mix threshold mandated by the Act if they are not permitted to provide services to the Medicaid insured population; and

WHEREAS, Louisiana currently has fifty-seven Medicare certified community mental health centers which are currently limited to providing only Medicaid mental health rehabilitation services; and

WHEREAS, the state seeks to continue offering the services provided by community mental health centers to its residents and to ensure quality care and freedom of choice of providers in a fiscally prudent manner.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby urge and request the Department of Health and Hospitals to study the impact of the Patient Protection and Affordable Care Act on Louisiana-based community mental health centers.

BE IT FURTHER RESOLVED that the Department of Health and Hospitals shall address the following matters in the study:

- (1) The role those centers should play in implementing comprehensive behavioral and mental health services within the state.
- (2) The potential costs of various options to expand participation of community mental health centers in the Medicaid program.
- (3) Any actions needed to assure the continued participation by community mental health centers in the Medicare program.

BE IT FURTHER RESOLVED that the secretary of the Department of Health and Hospitals shall submit a report of the findings and conclusions of the study to the House Committee on Health and Welfare by January 1, 2011.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

SENATE RESOLUTION NO. 152

BY SENATOR MCPHERSON

A RESOLUTION

To urge and request the Department of Health and Hospitals to study the impact of the Patient Protection and Affordable Care Act on Louisiana-based community mental health centers and to report the findings and conclusions of the study to the Senate Committee on Health and Welfare by January 1, 2011.

WHEREAS, the Patient Protection and Affordable Care Act, hereinafter referred to as the "Act", provides that beginning April 1, 2011, in order to meet the definition of a community mental health center, forty percent of the services provided by such centers must be provided to non-Medicare recipients; and

WHEREAS, currently, Louisiana's community mental health centers serve a Medicare insured clientele that receives approximately ninety percent of their total services and generates in excess of eighty-five million dollars for our state's economy, and in the event that Louisiana's community mental health centers cannot meet the forty percent threshold mandated by the Act, that funding could be substantially reduced or lost entirely; and

WHEREAS, the Act also expands Medicaid eligibility income limits to one hundred and thirty-three percent of the federal poverty level beginning in 2014; and

WHEREAS, the Department of Health and Hospitals estimates that may add as many as six hundred thousand Louisiana residents to the Medicaid program, means that almost forty percent of our population will be insured by Medicaid, making it virtually impossible for Louisiana-based community mental health centers to meet the payor mix threshold mandated by the Act if they are not permitted to provide services to the Medicaid insured population; and

WHEREAS, Louisiana currently has fifty-seven Medicare certified community mental health centers which are currently limited to providing only Medicaid mental health rehabilitation services; and

WHEREAS, the state seeks to continue offering the services provided by community mental health centers to its residents and to insure quality care and freedom of choice of providers in a fiscally prudent manner.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Department of Health and Hospitals to study the impact of the Patient Protection and Affordable Care Act on Louisiana-based community mental health centers.

BE IT FURTHER RESOLVED that the Department of Health and Hospitals shall include in the study the following:

- (1) The role those centers should play in implementing comprehensive behavioral health services within the state.
- (2) The potential costs of various options to expand participation of community mental centers in the Medicaid program.
- (3) Any actions needed to assure community mental health centers continued participation in the Medicare program.

BE IT FURTHER RESOLVED that the secretary of the Department of Health and Hospitals shall submit a report of the findings and conclusions of the study to the Senate Committee on Health and Welfare by January 1, 2011.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the secretary of the Department of Health and Hospitals.

PRESIDENT OF THE SENATE