



Children, Families, Health, and Human Services Interim Committee

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60th Montana Legislature

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Oct. 11, 2007

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-2261-P
P.O. Box 8018
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To Whom It May Concern

As chairwoman of Montana's Children, Families, Health, and Human Services Interim Legislative Committee, I am writing to submit comments on behalf of the committee regarding the proposed rule for Medicaid rehabilitative services.

As lawmakers, we understand the need for fiscal responsibility and accountability in government. However, we fear that some of the proposed changes could create gaps in needed therapeutic care for foster children, resulting both in harm to the children and in harm to the continuum of care that we have worked hard as legislators to create for Montana's most vulnerable young people.

Under Montana's Medicaid state plan, Medicaid currently covers the costs of the therapeutic and support services the children receive, in a daily rate. This practice allows the children to receive important therapeutic services in a setting that allows those services to be provided throughout each day as needed, rather than during specified blocks of time in a provider's office. At the same time, the children are able to remain in a community setting, where they can still attend school and take part in extracurricular activities.

We are particularly concerned about the following portions of proposed rule 2261-P/72 Fed. Reg. 45201:

- The definition of qualified providers of rehabilitative services, which could mandate educational levels, licensing requirements, or work experience that many of our therapeutic foster care parents have not attained.

Montana served about 800 youth in therapeutic foster care or therapeutic family care in the past fiscal year and another 500 young people in therapeutic group care. The change in definition for providers of care has the potential to reduce the number of providers available, thus displacing these youth and perhaps requiring that they be placed in a higher level of institutionalized care. We believe this change could end up removing foster youth from their more appropriate placement in a family and community setting.

- Exclusion of payment for services that “are intrinsic to elements of programs other than Medicaid.” This change could disallow payment for many elements that are critical to therapeutic care for youth in a family setting, because it is so difficult to separate medically necessary rehabilitation services from other services in a successful therapeutic setting.

Limiting Medicaid payment to only medically necessary rehabilitation services fails to recognize the medical benefits that seriously emotionally disturbed youth in foster care reap in many ways throughout their day while they are in a supportive, therapeutic foster care setting. In addition, the change would be contrary to the children’s system of care that Montana has designed to encourage comprehensive, wraparound services to children in the most appropriate and least restrictive setting possible. Medicaid funds have been a critical element of the funding needed to provide wraparound services.

Committee members have already formally expressed to the Montana congressional delegation our concerns about possible changes for payment of therapeutic foster care service and our hope that any changes would occur only after a thorough evaluation of how unbundling of rates has affected other states.

The above-mentioned portions of the rule CMS is proposing for rehabilitative services poses the potential for significant harm to hundreds of children in our state and elsewhere around the country, may shift significant costs to the states that they may be unable to support, and could lead to placement of many children in more restrictive settings away from family and community support systems.

We hope you will take these concerns into account and modify the rule to reduce the impact on therapeutic foster care programs.

Thank you for your consideration,

Sincerely,

Rep. Edith Clark, Presiding Officer
on behalf of the Children, Families, Health and Human Services Interim Committee

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