

Division of Medicaid and Children's Health Operations

October 30, 2009

Ronald J. Levy, Director
Missouri Department of Social Services
Broadway State Office Building
P.O. Box 1527
Jefferson City, MO 65102

Dear Mr. Levy:

By this letter, I am providing notice of the preliminary determination by the Centers for Medicare & Medicaid Services (CMS) that Missouri appears to be out of compliance with Federal Medicaid requirements by requiring Medicaid beneficiaries to be "confined to the home" as a condition for receipt of home health services. As discussed in more detail below, this restriction does not comply with the requirements of section 1902 of the Social Security Act (the Act) as implemented by applicable Medicaid regulations and relevant CMS interpretative policy. Therefore, at this time, I am requesting your cooperation with resolving this issue by submitting a State plan amendment (SPA) which removes this requirement from your State plan. Your response to our request should be received in our office within 30 days from receipt of this notice. Unless the State submits a SPA to come into compliance, CMS intends to commence a compliance action which could result in financial penalties as permitted under section 1904 of the Act.

Section 1902(a)(10)(D) requires that State plans provide for the coverage of home health services for any individual who, under the State plan, is entitled to nursing facility services. Nursing facility services are a required service for categorically needy populations under section 1902(a)(10)(A), as defined in section 1905(a)(4)(A).

Under CMS regulations, a service included as a covered benefit under a State plan must be "sufficient in amount, duration and scope to reasonably achieve its purpose" (42 CFR 440.230(b)) and, for required services, cannot be denied or reduced to an eligible beneficiary "solely because of the diagnosis, type of illness, or condition" (42 CFR 440.230(d)). It is not consistent with these requirements to deny home health services to eligible individuals who need such services on the basis that they are not homebound.

The CMS provided interpretive guidance indicating that these statutory requirements preclude denial of home health services to eligible individuals because they are not homebound. This guidance was issued in response to the June 22, 1999, Supreme Court decision in the case of *Olmstead v. L.C. & E.W.*, which reinforced the Americans with Disabilities Act by affirming the right of individuals with disabilities to live in their communities. Following this decision, CMS, then the Health Care Financing Administration (HCFA), issued a series of State Medicaid director letters (SMDL) to clarify Medicaid policy on issues impacted by the *Olmstead* decision.

On July 25, 2000, HCFA issued Olmstead Update #3 which clarified that the Medicare rule for home health services requiring an individual to be "homebound" did not apply to the receipt of Medicaid home health services. Specifically, Olmstead Update #3 states that the homebound requirement violates Federal regulatory requirements at 42 CFR section 440.230(c) and section 440.240(b).

The "homebound" requirement in Missouri was raised during the review of Missouri SPA 05-09. At that time, Missouri chose to withdraw the page containing the homebound language but did not reverse the policy. Since that time, there have been numerous discussions between CMS and Missouri regarding this issue. CMS believes that Missouri has had numerous opportunities to come into compliance with Federal requirements.

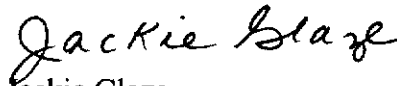
In accordance with regulations found at 42 CFR section 430.10, the State plan serves as a basis for Federal financial participation in the State Medicaid program. Section 430.12 states that the plan must provide that it will be amended whenever necessary to reflect changes in Federal law, regulations, policy interpretations, or court decisions; or material changes in State law, organization, or policy, or in the State's operation of the Medicaid program.

Since Missouri has not amended its State plan to reflect the statutory requirements discussed above and interpreted in Olmsted Update #3, CMS has reached the preliminary conclusion that the Missouri State plan is not in compliance with Federal requirements.

Therefore, if Missouri does not respond to this opportunity to correct this situation by submitting a SPA within a 30-day time frame which would bring the State into compliance, CMS intends to proceed with compliance proceedings in accordance with section 1904 of the Act. A compliance proceeding could result in withholding Federal funding for the all or part of the Missouri Medicaid program until the State comes into compliance. Such proceedings will be governed by the procedures set forth in CMS regulations at 42 CFR 430.35, with an opportunity for a hearing as set out at 42 CFR Part 430, Subpart D.

We hope you will agree to modify your policy to come into compliance with the law. If you have questions concerning this letter, please feel free to contact me at (816) 426-5925.

Sincerely,



Jackie Glaze

Acting Associate Regional Administrator
for Medicaid and Children's Health Operations

cc:

Dr. Ian McCaslin

Joel Ferber