



Administrator

Washington, DC 20201

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

FEB 26 2010

Mr. Ronald J. Levy
Director
Department of Social Services
Broadway State Office Building
Jefferson City, MO 65102

Dear Mr. Levy:

This letter provides notice that the Centers for Medicare & Medicaid Services (CMS) has found that Missouri is not providing all Medicaid beneficiaries with home health benefits that are required under title XIX of the Social Security Act (the Act) and that until this deficiency is corrected (by making home health services available to all beneficiaries entitled to such services), a portion of the Federal funding for home health services will be withheld, subject to the opportunity for a hearing. The details of the finding, proposed withholding, and opportunity for a hearing are described in detail below.

Specifically, CMS has found that the approved Missouri State plan under title XIX (Medicaid) of the Act is not in compliance with the provisions of section 1902(a) of the Act with respect to the home health benefit. In particular, CMS has found that the State plan does not provide for home health services for Medicaid beneficiaries who are not “confined to the home.” As a result of this “homebound” requirement, certain Medicaid beneficiaries are not receiving the full benefit package required under section 1902(a)(10) of the Act, which in subparagraph (D) provides for the inclusion of home health services in the standard Medicaid benefit package. Moreover, the “homebound” requirement does not comply with section 1902(a)(10)(B) of the Act, which requires that State plans provide a comparable amount, duration, and scope of benefits to all individuals eligible for the standard Medicaid benefit package, and within each optional group of individuals eligible for benefits based on medical need.

The basic framework of Medicaid coverage of home health services is set forth in the Federal statute and regulations. Section 1902(a)(10)(D) of the Act requires that State plans provide for the coverage of the home health services benefit, set forth in section 1905(a)(7) of the Act, for any individual who, under the State plan, is entitled to nursing facility services. Pursuant to section 1902(a)(10) of the Act, the nursing facility service benefit described at section 1905(a)(4)(A) of the Act is a required benefit that must be included in the standard Medicaid benefit package for categorically needy populations described in section 1902(a)(10)(A). Section 1902(a)(10)(B) of the Act sets forth the benefit comparability principle, that the amount, duration, and scope of medical assistance benefits for all categorically needy individuals described in section 1902(a)(10)(A) of the Act must be equal.

Under CMS regulations implementing the benefit package requirements at sections 1902(a)(10) and 1905(a) of the Act that are described above, home health services are included as a mandatory benefit for the categorically needy under 42 CFR 440.210(a)(1). Moreover, 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(c)). It is not consistent with these requirements to deny home health services to eligible individuals who need such services based on a “homebound” requirement.

The State has had clear notice that a “homebound” requirement is inconsistent with the Medicaid statute. 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, CMS, then the Health Care Financing Administration (HCFA), issued a series of State Medicaid Director letters 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. *Olmstead Update #3* specifically stated that the “homebound” requirement violates Federal regulatory requirements at 42 CFR section 440.230(c) and section 440.240(b).

The CMS notified the State in a request for additional information on proposed State plan amendment (SPA) 05-09 that the State needed to change its “homebound” requirement to comply with Federal requirements. At that time, Missouri withdrew the SPA page that raised this issue but did not reverse its policy in order to comply with Federal requirements. Subsequently, CMS has raised the issue with the State in numerous conversations and again in a letter dated October 30, 2009. Your letter of December 31, 2009, indicated that the State did not intend to make the required changes.

For all of these reasons, and in light of the need to protect beneficiaries by ensuring that they receive all the services to which they are required, I am taking this compliance action to withhold a portion of the Federal financial participation in State expenditures for home health services, subject to the opportunity for a hearing described below, until such time as I am satisfied that the State is complying with the Federal requirements discussed above. The withholding will initially be 10 percent of the Federal share of the State’s quarterly claim for home health services as reported on Line 12 of your Form CMS-64. The withholding percentage will then increase 5 percentage points each quarter (i.e., 15%, 20%, etc.) that the State remains out of compliance, up to a maximum withholding percentage of 100 percent. The withholding will end when a SPA bringing the State into compliance is approved by CMS.

The State has 30 days from the date of this letter either to submit a plan for how the State will come into compliance or to request a hearing. As specified in the accompanying *Federal Register* notice, we are providing an opportunity for an administrative hearing to ensure that you have an opportunity for a hearing prior to this determination becoming final. However, it is up to the State as to whether you choose to go forward with this hearing. If you choose to proceed with a hearing, you must submit a request within 30 days of the date of this letter. If a request for a hearing is timely submitted, the hearing will be convened by the Hearing Officer designated below no later than 60 days after the date of the *Federal Register* notice, or a later date by agreement of the parties and the Hearing Officer, at the CMS Regional Office in Kansas City, Missouri in accordance with the procedures set forth in Federal regulations at 42 CFR Part 430, Subpart D. The overall issue in any such appeal will be whether the Missouri homebound requirement is consistent with Federal requirements. Any request for such a hearing should be sent to the designated hearing officer. The Hearing Officer also should be notified if you request a hearing but cannot meet the timeframe expressed in this notice. Your Hearing Officer is:

Benjamin R. Cohen, Hearing Officer
Centers for Medicare & Medicaid Services
2520 Lord Baltimore Drive, Suite L
Baltimore, MD 21244

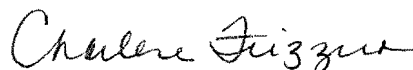
If you choose not to request a hearing, and plan to come into compliance, please submit within 30 days of the date of this letter an explanation of how you plan to come into compliance with Federal requirements and the timeframe for doing so. We are available to provide further information or assistance on the steps necessary to bring the State into compliance.

Should you not come into compliance and not request a hearing within 30 days, a notice of withholding will be sent to you and the withholding of Federal funds will begin as described above.

If you have any questions or wish to discuss this determination further, please contact:

Mr. James G. Scott
Associate Regional Administrator
Division of Medicaid and Children's Health Operations
CMS Kansas City Regional Office
601 E. 12th Street
Kansas City, MO 64106

Sincerely,



Charlene Frizzera
Acting Administrator