

MEMORANDUM

TO: Joint Budget Committee

FROM: Melodie Beck, JBC Staff

SUBJECT: Senate Bill 11-250

DATE: June 20, 2011

As the Committee is aware, during the last few weeks of the legislative session, the Department of Health Care Policy and Financing recommended that the General Assembly pass S.B. 11-250 in order to ensure the continued eligibility for pregnant women from 205% to 250% FPL for the CHIP waiver program (Title XXI). In negotiating the renewal of this waiver with the Centers of Medicare and Medicaid Services (CMS), the Department was informed that CMS would no longer approve continued eligibility for this population unless the State first transferred all pregnant women on the CHIP waiver from 133% to 185% FPL to the Medicaid program. This was based on the CMS interpretation of requirements pursuant to the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPR). Without S.B. 11-250, the ability of the state to draw federal matching funds for 350 currently enrolled pregnant women would have been at risk.

Because the fiscal impact for S.B. 11-250 is not anticipated until FY 2012-13 (due to CBMS changes) and the lateness in the session, the bill did not go to the Appropriations Committees. However, staff wants to inform the Committee of a few concerns and issues that staff has with the fiscal impact of this bill (normally these items would have been included in the JBC Appropriation Analysis and made public).

1. Without this legislation, (CMS) had informed the Department that CMS would not renew the State's waiver to provide coverage to pregnant women between 205 percent and 250 percent of the Federal Poverty Level (FPL). This would impact insurance coverage for 350 currently enrolled pregnant women. CMS believed that CHIPR required the State to expand Medicaid to 185% FPL for pregnant women before being able to expand eligibility for pregnant women under CHIP. If Colorado had not expanded eligibility for CHIP (from 205% to 250% FPL), there would be no requirement to move the women from 133% to 185% FPL to Medicaid. In staff's opinion, CHIPR does not explicitly state that an existing CHIP waiver could not be expanded without transferring the majority of women from the existing waiver to Medicaid. This is CMS's interpretation of CHIPR requirements.

2. The Department and the fiscal assumptions used for this bill assume that the pregnant women transferring from health coverage under CHIP to the Medicaid program will continue to receive the 65 percent federal financial participation. This assumption is based on e-mail correspondence from CMS officials. However, this seems to contradict the official State Health Official letter from CMS.¹ Furthermore, staff is unaware of any federal legislation or rules that *specifically* allows for the enhanced federal match for *adult women* (an enhanced federal match is available for *children* covered under Medicaid through provisions in the Children's Health Insurance Program Reauthorization Act). During the year between enactment and implementation, staff recommends that the State receive official confirmation (more than an e-mail) confirming the enhanced match rate to protect the State from any future audit question.

3. The Department provided the following information to staff:

"Under the federal Affordable Care Act (ACA), Medicaid eligibility will be set at 133% FPL for all individuals under age 65 and individuals up to 400% FPL will receive federal subsidies to purchase health insurance through state health care exchanges effective January 1, 2014. By setting an income eligibility above the new Medicaid floor, the State will be liable for part of the costs of these individuals (5% in 2017 increasing to 10% in 2020 thereafter), whereas there would be no cost to the state for the health insurance coverage for these individuals without the proposed legislation or if the income eligibility is reduced back to 133% FPL in 2014."

4. The savings anticipated in the fiscal assumptions for the bill are based on the average per capita costs for pregnant women served in the Children's Basic Health Plan compared to average per capita costs for pregnant women served in the Medicaid program. Two reasons why per capita costs in the CBHP are higher than Medicaid per capita costs include:

¹This approval seems to contradict information in an official CMS letter to State Medicaid Director's dated May 11, 2009 that states, "... In order to cover pregnant women through the State plan option under CHIP, States must meet the following criteriaStates must cover pregnant women under Medicaid up to the minimum income level of 185 percent of the Federal poverty level (FPL). Any State that currently does not provide Medicaid coverage for pregnant women up to this income level, can only claim regular FMAP for pregnant women covered under a Medicaid expansion whose family income is at or below 185 percent of the FPL."

- (a) Higher reimbursement rates paid to providers under the CBHP program (i.e. inpatient and outpatient hospital rates are paid at 135 percent of the Medicaid Diagnostic Related Group). This bill results in a major reimbursement reduction for hospitals for this population.
- (b) Newborns without a state ID in the CBHP program are covered under the CBHP prenatal program while under the Medicaid program most of claims for newborns without a state ID are included under the children's eligibility per capita costs. The Department has concluded that this impact is very minimal after further review.

Staff Recommendation

Based on these concerns, staff recommends that the Committee send a letter to Secretary Sebelius seeking clarification on the legal requirements for transferring this population and the federal match available for the program. Staff recommends that the letter also explain the policy concerns regarding the transfer which are:

- (1) A major reimbursement reduction for hospitals serving this population;
- (2) Pregnant women may be required to switch providers mid-pregnancy due to different provider networks available between the Colorado CHIP and Medicaid program;
- (3) The State will become liable for costs under ACA that the state would not have incurred if this population remained in CHIP;
- (4) Conflicting statements regarding the federal match available for this population;
- (5) The babies will have different insurance than their mothers (which may lead to confusion for both the family and for billing);
- (6) We are engaging in a major program change for approximately 6 to 12 months before ACA will once again change the requirements for the program.

A draft of the letter recommended is attached for the Committee's review.

STATE OF COLORADO

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June 20, 2011

The Honorable Kathleen Sebelius
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue, S.W., Room 120-F
Washington, D.C. 20201

Dear Secretary Sebelius:

During the last days of the recent legislative session, the Colorado General Assembly passed Senate Bill 11-250 which transferred eligibility of pregnant women between 133 through 185 percent of the federal poverty level (FPL) from the State's Children Health Insurance Plan (CHIP) demonstration waiver (Title XXI) to Medicaid (Title XIX) coverage. This bill came to the General Assembly as a recommendation from our State Medicaid Agency. In negotiating the renewal and expansion of Colorado's Title XXI demonstration waiver for pregnant women, the Centers of Medicare and Medicaid Services (CMS) informed our State Medicaid Agency that this law change was required pursuant to the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). If Colorado failed to make this eligibility change, the General Assembly was informed that CMS would no longer approve the expansion of our Title XXI demonstration waiver for the pregnant women between 205 through 250 percent FPL. This waiver expansion had been approved by CMS on a monthly basis since May 2010 and currently serves approximately 350 pregnant women. Rather than risk the possibility of 350 pregnant women losing health insurance coverage, the General Assembly passed S.B. 11-250. However, as the Committee that oversees State budgeting issues, we have lingering concerns regarding this issue and seek official clarification.

1. *Clarification of the CMS interpretation of CHIPRA Requirements*

Prior to CHIPRA, States could provide services to pregnant women under CHIP waiver programs. Colorado has had a waiver to cover pregnant women in the CHIP program since 2002. Over the last nine years, eligibility for Colorado's CHIP pregnant women waiver has changed as follows:

- (a) in 2002 the original waiver's eligibility was 133% to 185% FPL;
- (b) in 2005 the eligibility expanded from 185% to 200% FPL; and
- (c) in 2007 the eligibility expanded from 200% to 205% FPL.

In March 2010, CMS approved a hospital provider fee program as part of a larger health care reform initiative in Colorado (House Bill 09-1293). As part of this program, Colorado's CHIP eligibility for both children and pregnant women was expanded under state law from 205% to 250% FPL. In May 2010, Colorado began enrolling pregnant women with incomes between 205% to 250% FPL in our CHIP program based on the CMS approval of the hospital provider fee program. Colorado has received a Title XXI federal match for this population since May 2010. However, in negotiating the terms and conditions of the CHIP waiver renewal, CMS informed our State Medicaid Agency that CMS would no longer approve the eligibility change of between 205% to 250% FPL unless the women on the existing CHIP waiver from 133% to 185% FPL were transferred to the Medicaid program.

The May 11, 2009 State Health Official letter from CMS (SHO #09-006, CHIPRA #2) states that "*CHIPRA allows States to continue existing section 1115 demonstrations that provide coverage for pregnant women with title XXI funds.*" This is based on the following section of CHIPRA:

"(1) CONTINUATION OF OTHER OPTIONS FOR PROVIDING ASSISTANCE -- The option to provide assistance in accordance with the preceding subsections of this section shall ***not*** limit ***any other option*** for a State to provide --

(B) pregnancy-related services through the application of ***any waiver authority*** (as in effect on June 1, 2008)." -- *Section 2112 (f) (1) (B) of the Children's Health Insurance Program Reauthorization Act of 2009* {emphasis added}

While the expansion of eligibility from 205% to 250% FPL was after June 1, 2008, the waiver for which Colorado was expanding eligibility has existed since 2002. However, CMS is interpreting CHIPR to mean that if Colorado expanded eligibility to our existing waiver, then Colorado would need to meet the requirements under Section 2112 (b) (1) (A) of CHIPR. This section requires that before a state adds a *state plan amendment* to their CHIP program *electing to cover* pregnant women, the state's Medicaid program must be expanded to 185% FPL. However, Colorado is not adding a state plan amendment -- Colorado was amending a waiver that has been in place since 2002.

Please clarify why Colorado's waiver *and* expansion of the existing waiver to 250% FPL could not be interpreted as grand fathered in as an existing waiver authority under Section 2112 (f) (1) (B) of CHIPR.

2. *Policy and Budget Implications to Colorado of CMS's Interpretation*

(a) **State Match Available to the State**

Colorado has received conflicting messages on the federal match rate available when the eligibility between 133% to 185% FPL is transferred from the CHIP program to the Medicaid program.

The State Health Official letter dated May 11, 2009 (SHO #09-006, CHIPRA #2) states: "*States must cover pregnant women under Medicaid up to the minimum income level of 185 percent of the Federal poverty level (FPL). Any State that currently does not provide **Medicaid** coverage for pregnant women up to this income level, can only claim regular FMAP for pregnant women covered under a Medicaid expansion whose family income is at or below 185 percent of the FPL*" {emphasis added}."

An e-mail from Richard C. Allen, Associate Regional Administrator, CMS, Region VIII states: "*As part of the proposed Special Terms and Conditions, Colorado has agreed to submit a Medicaid State plan amendment to transfer coverage of pregnant women from 133 through 185 percent of the FPL from the title XXI demonstration to the Medicaid State plan and to provide these women with Medicaid benefit package.....This e-mail confirms that as long as the State establishes a CMS/State agreed upon date (in the Special Terms and Conditions of the demonstration)for transitioning pregnant women from 133 percent through 185 percent of the FPL from the demonstration to the Medicaid State plan, the State will be able to continue to receive title XXI funds for this population.*"

Please clarify:

- (1) What legal authority does CMS have to give Colorado Title XXI funds for a Title XIX **adult** population? The Regional Office e-mail appears to conflict with the State Health Official letter.
- (2) Please send us an official letter guaranteeing Colorado will receive the Title XXI (65%) federal match instead of the Title XIX (50%) federal match for this population. This is a significant budget concern. The population from 133% to 185% served under the current CHIP waiver is approximately 1,300 clients. Therefore, the majority of clients served under Colorado CHIP waiver will be transferring to Medicaid program per CMS's direction.

Colorado needs to know with certainty that Title XXI funds can be used to serve adults on the Medicaid program. An official letter would help protect the State in case of any future federal audit question arising from claiming Title XXI funds for a Title XIX population.

(b) Changes to Our Eligibility System --Time Line

Because of other priorities and backlogs, our State Medicaid Agency estimates that the time line needed to make the necessary changes to our eligibility system (Colorado Benefits Management System -- CBMS) will be 12 to 18 months out from the passage of S.B. 11-250. Therefore, Colorado will not implement this transfer until State Fiscal Year 2012-13.

The Medicaid eligibility provisions in the federal Accountable Care Act (ACA) will be effective on January 1, 2014. Therefore, approximately six to 12 months after Colorado makes this change, Colorado will have a population that exceeds the Medicaid eligibility allowed under ACA (which is 133% FPL). By requiring Colorado to set an eligibility above the new Medicaid floor, our State Medicaid Agency's interpretation is that this CMS decision will make Colorado liable for a portion of the costs of these clients under ACA beginning in 2017. Colorado would not have this liability if these clients remained in the CHIP program until the exchange was operational.

In order to avoid additional costs under ACA, Colorado may have to consider eliminating the entire Medicaid and CHIP pregnant population from 133% to 250% FPL on December 31, 2013. This is not a preferable option. Colorado would rather see this population gradually move to the exchange program under ACA through the natural attrition in the program. This would be possible if these women remained in the CHIP waiver program.

(c) Provider Rate Reimbursements and Disruption to the Health System

This change will have considerable impacts to both the providers and clients as follows:

- (1) The Colorado CHIP program currently reimburses inpatient and outpatient hospitals at 135 percent of the Medicaid Diagnostic Related Group. Transferring this population from CHIP to Medicaid will result in a significant reimbursement reduction for our hospital providers.
- (2) This transfer will result in some pregnant women switching providers mid-way through a pregnancy due to different provider networks available between the Colorado CHIP and Medicaid programs.

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- (3) The babies of the pregnant women will have different coverage (CHIP) than the mothers (Medicaid). This may result in confusion to the family. In addition, billing information may be inaccurate if the infant is not immediately provided with a CHIP ID (i.e. some billing may come in under the mother's ID for an infant that is not eligible for Medicaid but is eligible for CHIP -- this will drive additional administrative reviews and reconciliations).

In our opinion no public purpose is accomplished at either the federal or state level from transferring these women who are currently served by an existing CHIP waiver (that predated CHIPR) to the Medicaid program. Transferring the population will not improve access to care or quality of care. However, it will cause disruptions for the clients, providers, and the State for a temporary issue which ACA will make obsolete within six to twelve months after the transfer.

We appreciate the efforts of CMS to work with the states during these challenging budget times and transition periods for the Medicaid and CHIP programs. We appreciate your time to respond to our specific concerns. If you have any questions about this letter, please contact Melodie Beck, our staff analyst for the Colorado Medicaid program, at 303-866-4549.

Sincerely,

Senator Mary Hodge
Chair

cc: Governor John Hickenlooper
Cindy Mann, Director Centers for Medicare and Medicaid Services
Sue Birch, Director of Colorado Department of Health Care Policy and Financing