

# WebMemo



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## The Medicaid Regulations: Stopping the Abuse of Taxpayers' Dollars

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Congress may soon undermine efforts to instill integrity into the Medicaid program by weakening important safeguards against its abuse. These safeguards are embodied in seven rules proposed by the Centers for Medicare and Medicaid Services (CMS). These rules would establish clear guidance for states seeking federal matching payments. However, the Protecting the Medicaid Safety Net Act (H.R. 5613) would extend a moratorium on these rules.

H.R. 5613 has been passed by the House of Representatives with majority support, and the fate of these rules now awaits action in the Senate. The rules would close the loopholes involved with inter-governmental transfers; end Medicaid payments for graduate medical education; limit provider taxes; and clarify reimbursement policy for school-based administrative and transportation services, rehabilitation services, outpatient hospital services, and targeted case management.

Medicaid, the joint federal–state health care program for the poor, is a largely unreformed welfare program. It is one of the largest of the government health programs, disposing of \$338 billion in taxpayer money last year. It gives the states generous and unlimited federal matching funds for the delivery of Medicaid services. The federal matching rate for the states ranges from 50 percent to 83 percent. Under this matching system, for every dollar a state spends, the federal taxpayer contributes between one and three dollars.

This generous and unlimited federal matching structure creates perverse incentives to maximize

federal contributions. Some politicians in the states manipulate the Medicaid financing system accordingly, using inappropriate or questionable techniques. Some states use accounting gimmicks, and others bill the federal government for services outside of Medicaid's scope. To combat these and other questionable practices, CMS officials are therefore proposing these rules.

**The Congressional Moratorium: Bad Policy.** Members of Congress who are concerned about the proper use of taxpayer dollars must recognize the serious policy implications of extending the moratorium on these seven Medicaid regulations.<sup>1</sup> For example:

- *It is an important test for those concerned about entitlements.* Allowing the regulations to go into effect would save the Medicaid program \$17.8 billion over five years and \$42.2 billion over 10 years by weeding out suspicious and unacceptable federal payments to the program.<sup>2</sup> Medicaid cost federal taxpayers \$190 billion in 2007 and is expected to cost \$402 billion in 2017.<sup>3</sup> This is a small but key measure of Congress's willingness to tackle the enormous entitlement problem.
- *It ignores the extensive evidence on states' manipulation of the federal matching structure.* For

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decades, the Government Accountability Office (GAO) and the Inspector General at the Department of Health and Human Services have amply documented the states' manipulation of the federal matching program. In 1994, for example, the GAO released *Medicaid: States Use Illusory Approaches to Shift Program Costs to Federal Government*.<sup>4</sup> The Bush Administration has also been active on this issue.<sup>5</sup> The need for these regulations should be well understood by Members of Congress. Congress, as keeper of the taxpayers' purse, has a responsibility to make sure that taxpayers' dollars are spent wisely.

- *It risks no action on addressing the abuses.* The legislation extends the moratorium for these regulations into next year and thus hands the issue to the next Administration and Congress. As noted, many of these regulations extend current moratoria. Congress has had ample time to review the decades of documentation on these abuses and propose alternatives.

**What Congress Should Do.** *First*, Congress should allow these remedial regulations to move forward without further delay. Congress has yet to propose any substantive alternatives to address the exploitation of the federal Medicaid matching rate. Under these regulations, the federal government would continue to fund legitimate Medicaid services,

and states would be held accountable for paying their fair share.

*Second*, Congress should consider transferring non-health services out of Medicaid. Congress could eliminate the ambiguity of qualified Medicaid services by limiting the federal matching rate to essential medical services. All other non-medical support services—such as rehabilitation, transportation, school-based services, and graduate medical education—should be considered discretionary spending.

*Third*, Congress should reform Medicaid and its financing. As noted, the current federal matching rate system and the open-ended entitlement structure encourage states to manipulate the system to maximize federal contributions. Medicaid, along with the other major entitlements, faces long-term fiscal disaster. If Congress is serious about reforming the nature of these entitlements, it could start by reforming the way the Medicaid program is funded.

**Conclusion.** There is insufficient accountability and transparency to taxpayers in the Medicaid program. Some states have exploited this lack of transparency to their full advantage. Congress should not delay the Medicaid regulations that are intended to address these abuses.

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1. For a list and explanation of the regulations, see Dennis Smith, Director, Center for Medicaid and State Operations, U.S. Department of Health and Human Services, testimony before the U.S. House Energy and Commerce Health Subcommittee, April 3, 2008, at [www.tinyurl.com/3quu9e](http://www.tinyurl.com/3quu9e).
2. "Prohibit implementation of certain Medicaid administrative actions," Congressional Budget Office Table, April 23, 2008.
3. Sean Keehan *et al.*, "Health Care Spending Projections Through 2017: The Baby-Boomer Generation is Coming to Medicare," Web Exclusive, Health Affairs Web Exclusive, 27, No. 2 (2008), pp. w145–w155, p. w151, at <http://www.content.healthaffairs.org/cgi/reprint/27/2/w145>.
4. See "HR 5613—Protecting the Medicaid Safety Net Act," Republican Study Committee *Legislative Bullet*, April 22, 2008, pp. 8–9, at [www.house.gov/hensarling/rsc/doc/lb\\_042208\\_medicaid\\_regs.doc](http://www.house.gov/hensarling/rsc/doc/lb_042208_medicaid_regs.doc).
5. Tom Scully, Administrator, Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, testimony before the U.S. House Energy and Commerce Subcommittee on Health, October 8, 2008, at [www.tinyurl.com/4ymzpa](http://www.tinyurl.com/4ymzpa).