

FEDERAL ISSUES

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PROPOSED RULE LIMITING MEDICAID PAYMENTS TO PUBLIC HOSPITALS

Position

The County opposes the proposed rule which would limit Medicaid payments to public hospitals to the cost of providing services to Medicaid recipients.

Background

The Los Angeles County Department of Health Services (DHS) operates the nation's second largest local public hospital system, and serves as the primary health care provider to the County's uninsured and indigent residents. DHS provides medical care to nearly 700,000 patients and is responsible for 2.6 million outpatient visits each year. Its hospitals account for 10 percent of total hospital bed capacity, train 46 percent of all medical residents, and provide 35 percent of all trauma care and 13 percent of all emergency room visits in the County.

Medicaid, by far, is the single largest source of revenue for public hospitals, including the County's. In recognition of their key role in providing medical care to the indigent and uninsured as well as to Medicaid recipients, public hospitals are allowed to receive Medicaid payments that exceed the cost of medical care provided to Medicaid recipients. In addition, public hospitals provide critical high cost services, such as trauma, neo-natal, HIV/AIDS, and burn care.

Since 2004, the President's annual budget requests have proposed limiting Medicaid payments to government providers to the cost of providing services to Medicaid recipients. In 2004 and 2005, they were offered as legislative proposals, which Congress rejected. However, in 2006, the Administration changed its strategy by proposing that the Medicaid payment cap be implemented administratively. On January 18, 2007, the Centers for Medicare and Medicaid Services (CMS) issued the long-awaited proposed rule to limit Medicaid payments to government providers. The Administration estimates that the rule, which is proposed to take effect on September 1, 2007, would reduce Federal Medicaid spending by \$5 billion over the next five fiscal years.

Oppose Proposed Medicaid Rule: The County opposes the proposed rule because it would greatly reduce Medicaid funding for public safety net hospitals, including those in California, and endanger the patients and communities served by them. We understand that CMS staff has told State health officials that the rule will not affect California's Medicaid Hospital Financing Waiver. However, it is our interpretation that the State's waiver will be affected because the proposed rule explicitly states that all Medicaid payments "made under the authority of the State plan and under Medicaid waiver and demonstration authorities are subject to all provisions of this regulation." In addition, the terms and conditions for the waiver require the State to comply with any regulatory or statutory changes.

Capping Medicaid payments to public hospitals to no more than the cost of providing services would undermine California's Hospital Financing Waiver by substantially reducing Safety Net Care Pool payments to safety net hospitals under the waiver, making it impossible to achieve the goal of the waiver to protect baseline funding levels and provide for growth. The waiver's Safety Net Care Pool currently helps finance medical care provided to DHS' Medicaid and uninsured patients, who make up about 77 percent of all DHS patients. The proposed rule, if implemented, would result in an estimated annual Medicaid funding loss of \$500 million to public hospitals in California of which County DHS hospitals would lose at least \$200 million.

An annual \$200 million revenue loss cannot be absorbed without endangering the County's already fragile health care safety net system. Potential service reductions from a loss of such magnitude would be equivalent to closing all non-hospital DHS clinics and eliminating funding for contract private clinics, resulting in the estimated elimination of 1.3 million outpatient visits a year. Private hospitals and clinics in the County already are struggling financially, as evidenced by the closure of nine emergency rooms since 2003. Therefore, they can ill afford to incur increased uncompensated costs that would result from the curtailment of County health care services.

The County supports a provision in S. 965, the Senate-passed FY 2007 supplemental appropriations bill, which would impose a two-year moratorium on the implementation of the proposed Medicaid rule. The House-passed version (H.R. 1591) does not include such a provision.

Status

The County joined numerous other state and local governments and health providers in submitting comments opposing the proposed rule before the public comment period ended on March 19, 2007. The CMS currently is reviewing the comments. Conference committee action currently is pending to reconcile the differences between the Senate and House versions of the FY 2007 supplemental appropriations bill.

FOR FURTHER INFORMATION, PLEASE CONTACT BRUCE CHERNOF, M.D., DIRECTOR AND CHIEF MEDICAL OFFICER, DEPARTMENT OF HEALTH SERVICES, AT (213) 240-8101.

MARTIN LUTHER KING, JR. – HARBOR HOSPITAL

Position

The County is grateful to the Members of the California Congressional delegation who supported the Board of Supervisors' effort to extend Federal certification of the hospital through August 15, 2007.

Background

Martin Luther King, Jr.-Harbor Hospital (MLK-Harbor) has been engaged in a far-reaching restructuring effort since the fall of 2006 when it failed a Federal inspection and faced the prospect of losing \$200 million in funding. This restructuring effort, known as MetroCare, involves remaking the facility into a smaller community hospital under a new regional management structure. Under the MetroCare plan, MLK-Harbor is being transformed from a 170-bed hospital to a 120-bed facility.

After MetroCare was first approved by the Board, the Centers for Medicare and Medicaid Services (CMS) allowed an initial four-month extension of the provider agreement to enable the County to continue to bill Medicaid for services provided while the reorganization was implemented.

When the County asked for a final extension of the provider agreement through August 15, 2007 in order to allow completion of the concluding phase of MetroCare to be followed by a final Federal reinspection of the hospital, CMS initially disagreed and contended the prior extension provided adequate time to do the necessary work.

Failure to allow for this final period would have jeopardized nearly \$60 million in Federal funding, increased the chance of another inspection failure, and put at risk nearly 250 graduate medical education slots that are available to the community only if the current provider agreement stays in effect.

With the final extension in doubt, the California Congressional delegation joined Governor Schwarzenegger and key community leaders in expressing strong support for the Board's effort to complete MetroCare. CMS reexamined the issue and agreed to a provider agreement extension.

Status

On March 30, 2007, County, State, and Federal officials reached agreement on a contract extension for MLK-Harbor through August 15, 2007. Under the terms of this agreement, MLK-Harbor must request a reinspection survey by July 9, 2007. No additional extensions will be allowed.

County and State health staff are working together with regional CMS staff on a weekly basis to help MLK-Harbor prepare for the final survey. The path to having a fully compliant hospital remains difficult. The support of CMS is vital to giving the hospital every opportunity to continue to serve this medically underserved area.

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PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS

Position

The County supports funding to improve public safety interoperable communications and the direct allocation of such funds to regions, based on risk and need.

The County supports local flexibility over the use of grant funds.

Background

The September 11th terrorist attacks highlighted the importance of interoperable communications -- the ability of law enforcement, fire, emergency medical services (EMS), and other first responders to talk and send data to each other on demand using radio communications systems. Improved interoperable communications is especially challenging in the Los Angeles region where there is a patchwork of separate stand-alone communications systems which use separate radio towers, equipment, and frequencies primarily designed to meet the interoperability needs of each of the 54 law enforcement agencies and 31 fire departments that serve different jurisdictions and areas of Los Angeles County. Much of the equipment used by these systems is obsolete and incompatible. As a result, first responders have a limited ability to communicate with those in other public safety agencies, which hampers emergency response when there is a major disaster which affects multiple jurisdictions, such as the urban riots in 1992 and Northridge earthquake in 1994.

Recognizing the Los Angeles region's need for a shared regional radio interoperable communications system, the public safety community has begun to plan the development of such a system -- the Los Angeles Regional Interoperable Communications System (LA-RICS). Their initial plans to meet the region's interoperability needs already have been reviewed and approved by the Interoperability Communications Technical Assistance Program staff of the Department of Homeland Security (DHS). The LA-RICS is being developed by a new governing body, called the LA-RICS Authority, for which a joint powers authority is being finalized, and which includes public safety officials and executives from the County and City of Los Angeles as well as other municipalities.

Federal Grant Funding: The County supports Federal funding to improve public safety interoperable communications. The Public Safety Interoperable Communications (PSIC) Grant Program, funded by a one-time appropriation of \$1 billion in the Deficit Reduction Act (DRA) of 2005, currently is the sole Federal public safety communications grant program. The DHS' State Homeland Security and Urban Area Security Initiative (UASI) grants may be used for certain communications equipment and activities, but those grants also must meet many other needs and have not been adequately funded. The PSIC Grant also will be administered by the DHS under a Memorandum of Understanding with the Department of Commerce. The DHS, which still is developing the grant's guidelines and allocation formula, has indicated that it plans to award grants by the end of the current fiscal year.

Direct Funding to Regions: The County supports the direct allocation (or mandatory state pass-through) of public safety communications grant funding to regions, such as the Los Angeles region. This is justified because the vast majority of the nation's first responders are local fire, law enforcement, and EMS personnel who not only protect the public and respond to emergency calls every day, but also are the first to respond to any major emergency. Moreover, major emergencies – especially terrorist attacks – are far more likely to affect only one region rather than multiple regions or an entire state. Defining the Los Angeles region as the entire 4,084 square miles within Los Angeles County, including all of its 88 cities and unincorporated areas, is how the region is defined for LA-RICS, the shared regional interoperable communications system which is being developed. It also is consistent with how all Federal homeland security, emergency management, bioterrorism, and hospital preparedness grant funds currently are directly allocated or passed through, based on measures of risk or need for the entire geographical area of the County.

Allocation Formula: Communications grant funding should be allocated based on risk and need, as measured by factors, such as the risk of major disasters, the number of first responders who must communicate with each other, and the number of persons who would be affected by a major disaster. The Los Angeles region would receive a relatively high share of total funding if such criteria were used. It has the most residents and first responders of any county, and also faces the greatest risk of being struck by a variety of natural and man-made disasters, ranging from earthquakes and brush fires to terrorist attacks and refinery explosions. Los Angeles County is one of only six "Tier 1" high-threat urban areas, which, in aggregate, receive over half of all UASI Grant funds, based on a terrorist risk-based methodology. The risk of natural and other man-made disasters, which can occur without warning, should be included in any risk-based methodology used to allocate communications grant funding.

Use of Grant Funds: The County supports local flexibility over the use of Federal public safety communications grant funds to ensure that a region's needs are effectively met. Grant guidelines neither should mandate the technology nor radio spectrum to be used by public safety agencies. Instead, they should be based on technology-neutral standards which are developed in collaboration with public and private stakeholders and provide for maximum flexibility. A "one size fits all" solution to interoperable communications will not work because needs and conditions vary within states as well as between states. DHS and Commerce officials have indicated that the PSIC Grant will focus on building intrastate and interstate capabilities. We urge that this focus not lead to the issuance of grant guidelines that would limit local flexibility to use funds to implement LA-RICS or otherwise meet important interoperable communications needs within the Los Angeles region.

Status

The DHS and Commerce still are developing guidelines for the \$1 billion PSIC Grant Program. Legislation (H.R. 1 and S. 1) which would implement some of the recommendations of the September 11th Commission is pending conference committee action. Both houses include language which would authorize public safety communications as well as first responder grants in future years. However, similar to the past years, the major sticking point is that the Senate bill includes relatively high minimum guarantees for small states that would result in their receiving a disproportionately high percentage of total funding.

FOR FURTHER INFORMATION, PLEASE CONTACT SHERIFF LEE BACA AT (323) 526-5000, OR P. MICHAEL FREEMAN, FIRE CHIEF, AT (323) 881-2401.

JUSTICE ASSISTANCE AND SCAAP FUNDING

Position

The County supports increased funding for the Byrne Justice Assistance Grant and juvenile justice formula grants, which allocate funds to state and local governments, based on need.

The County supports funding to fully reimburse state and local criminal alien incarceration costs under the State Criminal Alien Assistance Program (SCAAP).

Background

Los Angeles County operates the nation's largest local criminal justice system. The Sheriff's Department incarcerates more inmates than any other local jurisdiction, and also provides law enforcement services in all unincorporated areas and, under contract, to 40 cities, 47 courthouses, nine community colleges, and the Metropolitan Transportation Authority. The County also runs the nation's largest local prosecutorial, indigent defense, and probation systems.

The County's need for Federal justice assistance funding is high relative to other communities because, in addition to our major criminal justice system responsibilities, the County's crime rate has been significantly above the national average. In 2005, nearly five percent of all violent crimes in the country were committed in the County, according to Federal Bureau of Investigation (FBI) crime data. Only five states, including California, had more violent crimes than the County, and only one of those states (Florida) had a higher violent crime rate than the County.

Justice Assistance Funding: Since Fiscal Year (FY) 2002, overall Federal justice assistance funding to state and local governments, which is administered by the Office of Justice Programs (OJP), has been reduced by more than half, and the President's FY 2008 Budget proposes unprecedented deep cuts. It would eliminate the State Criminal Alien Assistance Program (SCAAP), the Byrne Justice Assistance Grant (JAG), and all juvenile justice formula grants to states and localities. These programs and 36 existing discretionary grants, which received a combined total of \$1.775 billion in FY 2006 funding, would be replaced by three new competitive discretionary grant programs that would receive a combined total of only \$830 million under the President's Budget. In comparison, this year, JAG alone was funded at \$520 million.

The County believes that funding for OJP formula grant programs should be increased instead of being replaced by new discretionary grants that would be funded at a far lower level. These formula grants provide local jurisdictions, such as the County, with the flexibility to use funds to meet locally determined needs and priorities unlike competitive discretionary grants where the Federal government decides how funds are to be spent.

Moreover, unlike the JAG and juvenile justice formula grants which annually allocate funds to all states and localities, including the County, based on measures of need, such as population, the number of violent crimes, and criminal justice expenditures, the County is not assured of receiving a grant under each discretionary program every year. In addition, all OJP discretionary grants have maximum grant limits that are extremely low relative to what the County would receive based on need, considering that the County has 3.4 percent of the total U.S. population and accounts for nearly five percent of all violent crimes. For example, this year, the maximum grant for the Gang Resistance Education and Training (GREAT) Program is \$150,000. Last year, when 141 GREAT grants were awarded nationally, the County's Sheriff's Department received a grant of \$60,000, which was equal to only 0.4 percent of the \$14.5 million in total grant awards.

SCAAP: The County believes that SCAAP funding should be increased to fully reimburse state and local costs of incarcerating undocumented criminal aliens rather than eliminated as proposed in the President's FY 2008 Budget. State and local taxpayers should not bear the burden of paying for these criminal justice costs since enforcement of immigration laws is a responsibility of the Federal government.

SCAAP has not been spared from the reduction in overall Federal justice assistance since FY 2002. SCAAP currently is funded at \$400 million, which is far below its \$577 million average funding level in FYs 1998 through 2002 and even farther below the amount needed to fully reimburse state and local costs. The Sheriff's Department estimates that, in FY 2005-06, which ended on June 30, 2006, the County's cost of jailing undocumented criminal aliens was nearly \$100 million, which far exceeds its most recent SCAAP payment of \$12.5 million for FY 2005 when SCAAP was funded at \$301 million. Every dollar in unreimbursed jail costs means a dollar less that can be spent on other essential public safety services.

None of the \$400 million appropriated for SCAAP in FY 2006 has been paid to state and local governments even though they were required to submit FY 2006 reimbursement claims for eligible costs incurred in the 12-month period ending on June 30, 2005 by a deadline of April 11, 2006. This delay is far longer than in the six prior fiscal years when SCAAP payments were made, on average, in five months, and no later than the first quarter of the following fiscal year. There also were not any changes in program guidelines, which might explain this delay. State and localities should be fully reimbursed for their criminal alien incarceration costs on a timely basis. They have yet to receive any SCAAP reimbursement for eligible costs incurred in July 2004 -- nearly 34 months ago.

Status

The President's proposed FY 2008 Budget was released on February 5, 2007. The Senate and House Appropriations Committees have been holding hearings on the FY 2008 Budget, but neither Committee has taken any action on FY 2008 appropriations legislation.

FOR FURTHER INFORMATION, PLEASE CONTACT SHERIFF LEE BACA AT (323) 526-5000, OR DISTRICT ATTORNEY STEVE COOLEY AT (213) 974-3501.