MEDICAID RATE ADVOCACY: WHAT IT TAKES TO GET FAIR PAYMENT

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MEDICAID RATES: LAWS

- Sec. 1902 of the Social Security Act. SAFEGUARDS AGAINST UNNECESSARY CARE AND SERVICES
- [42 U.S.C. §1396a(a)(30)(a)(30)(A)]
- provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area;
MEDICAID RATES: REGULATIONS

- 42 C.F.R. §447.201, State plan requirements.
- (a) A State plan must provide that the requirements in this subpart are met.
- (b) The plan must describe the policy and the methods to be used in setting payment rates for each type of service included in the State’s Medicaid program.

REAL LIFE ADVOCACY: STEPS TO SUCCESS

- Build relationships
- Be specific about what you want and know who can give it to you (managed Medicaid)
- Create a movement through compelling stories
- Gather your data
- Form Alliances
- Build a grassroots movement
- Ask, ask, ask
REAL LIFE ADVOCACY

- Colorado
- New Jersey
- Other

MEDICAID RATES: REGULATIONS

- 42 C.F.R. §447.203, Documentation of payment rates.
- (a) The agency must maintain documentation of payment rates and make it available to HHS upon request.
- (b) The agency must record, in State manuals or other official files, the following information for increases in payment rates for individual practitioner services:
  - (1) An estimate of the percentile of the range of customary charges to which the revised payment structure equates and a description of the methods used to make the estimate.
  - (2) An estimate of the composite average percentage increase of the revised payment rates over the preceding rates.
MEDICAID RATES: REGULATIONS

42 C.F.R. §447.204, Encouragement of provider participation.

The agency's payments must be sufficient to enlist enough providers so that services under the plan are available to beneficiaries at least to the extent that those services are available to the general population.

MEDICAID RATES: REGULATIONS

42 C.F.R. §447.205  Public notice of changes in Statewide methods and standards for setting payment rates.

(a) When notice is required.—
Except as specified in paragraph (b) of this section, the agency must provide public notice of any significant proposed change in its methods and standards for setting payment rates for services.

(b) When notice is not required.—
Notice is not required if—
(1) The change is being made to conform to Medicare methods or levels of reimbursement;
(2) The change is required by court order; or
(3) The change is based on changes in wholesalers' or manufacturers' prices of drugs or materials, if the agency's reimbursement system is based on material cost plus a professional fee.
MEDICAID RATES: REGULATIONS

(c) Content of notice.—
The notice must—
1. Describe the proposed change in methods and standards;
2. Give an estimate of any expected increase or decrease in annual aggregate expenditures;
3. Explain why the agency is changing its methods and standards;
4. Identify a local agency in each county (such as the social services agency or health department) where copies of the proposed changes are available for public review;
5. Give an address where written comments may be sent and reviewed by the public; and
6. If there are public hearings, give the location, date and time for hearings or tell how this information may be obtained.

MEDICAID RATES: REGULATIONS

Publication of notice.—
The notice must—
1. Be published before the proposed effective date of the change; and
2. Appear as a public announcement in one of the following publications:
   i. A State register similar to the Federal Register.
   ii. The newspaper of widest circulation in each city with a population of 50,000 or more.
   iii. The newspaper of widest circulation in the State, if there is no city with a population of 50,000 or more.
RATE LITIGATION

- Checkered history
  - Changing judicial views
- Jurisdictional difficulties
  - Private right of action?
  - Standing?
  - Standards for review?
  - Constitutional issues?
  - Role of CMS/HHS with State Plan review and approval
- State law option