Submitter : **Dr. Gerard Costa** **Date: 09/28/2007**

Organization : **YCS Institute for Infant and Preschool Mental Heal**

Category : **Other Practitioner**

Issue Areas/Comments

Background

Background

The proposed changes will result in a loss of services to the most vulnerable children and families by creating funding restrictions which will result in program closures funtionally resulting in denial of access to guaranteed care. This is particularly misguided since there are already serious inadequacies in the mental health service delivery system for infants, young children and parents. Despite growing evidence of the importance of investment in early childhood (see Nobel Economist James Heckman essay at http://www.ced.org/docs/summary/summary_heckman.pdf) and the strong movement towards increased mental health attention to infants and young children (e.g. www.zerotothree.org; http://www.developingchild.harvard.edu/) these proposed regulations make such investment in young children and their families, especially those most at risk, less likely by creating barriers and procedural beaucracies to access to their needed services.

Consider the child maltreatment data for 2004 (recent data available): 27 % of the victims were age 3 and younger, over 10% were under age one, the single largest age group of victims. These regulations will undermine an already limited service delivery system.

The therapeutic Foster care provisions are misguided: To qualify for reimbursement, therapeutic foster parents must be defined as providers under the state plan. Some therapeutic foster care activities are specifically not covered under this regulation, including provider recruitment, foster-parent training and other services if they are the responsibility of the foster care system. The regulation is silent about how these restrictions apply if the child is not in foster care. By creating such exclusions, families are left to themselves to broker for services, and rather than a unified, integrated, coherent and relationship-based service delivery system, the proposed regulation and enforcement provisions create a fragmented, gap-ridden system that families will have to negotiate - many of whom have neither the financial or emotional resources.

A second problematic part of the new rule prohibits federal payment for services that CMS deems intrinsic elements of other programs. The list of programs included under this rule includes foster care, child welfare, education, child care, vocational and prevocational training programs, housing, parole and probation, juvenile justice and public guardianship. Individuals in these programs would remain eligible for Medicaid and covered rehabilitation services could be provided to them and reimbursed but only if the services are not intrinsic elements of the other programs. Intrinsic elements is undefined. In 2004, Congress rejected a CMS proposal to include similar language in the Medicaid law. This is legally questionable because CMS likely does not have the legal authority to do this.

The proposed rule ups the requirements for being a 'competent' service provider. Many competent and caring professionals, such as bachelor's level case aides, therapeutic aides, may be disallowed as providers - creating loss of services in the short term, and increased costs in the long term. The proposed rule very broadly and specifically excludes all the services providers that constitute behavioral and specialized care within therapeutic systems who are not licensed providers, and the foster care system.

The provisions of the proposed regulations suggest that services which are funded under different entitlement programs should not be covered as part of integrated treatment programs. For example, if there are children with parents in a substance abuse program, one of the ancillary services necessary for the children's treatment programs to occur would be the provision of parenting. However, no funding provision has been created in any other agency entitlement program, or through any other funding bills to cover these services specifically.

Gerard Costa, Ph.D.
YCS Institute
gcosta@ycs.org

Collections of Information Requirements

Collections of Information Requirements

According to the federal register the proposed regulations will save' the government 2.2 billion over the next 4 years (2008-2012).By contrast, according to an Op Ed piece by Linda Bilmes in the 8/20 NYT, the Iraq war costs at least 6 billion dollars a week.

Our children need more investment.

Submitter : **Mrs. Melissa Liechty** **Date: 09/28/2007**

Organization : **HRHS/Behav. Health/Clubhouse**

Category : **Hospital**

Issue Areas/Comments

GENERAL

GENERAL

I am writing to address the changes in the Medicaid funding. I have grave concerns regarding changes in this funding.
I have worked in the field of Mental Health for over 25 years with serious mental illnesses. In the Past 5 years I have had the opportunity to participate in a kind of treatment that has been the most progressive, and subsequently rewarding.
This is called 'Clubhouse' modeled after Fountain House Clubhouse in New York. I have seen people begin to volunteer, go back to school and work that never would have done this had we not implemented this program!
It is most certainly a mistake to re-organize funding for long approved services in an effort to reduce short term spending. The end cost of this will rear its ugly head, resulting in increased hospitalizions, suicides,and incarccrations.

I am very concerned about the direction the governing bodies are going in making decisions about care. It is wrong to re-organize funding for persons with Serious Mental Illness.
Clubhouse really makes a difference in helping people connect to their communities by becoming contributing members to society, through work, volunteering and education it is also a form of treatment that is compassionate, provides hope and quality to a persons life These achievements will not be attained if funding does not follow quality.

Melissa Liechty,
2718 Bagley Drive West
Kokomo, Indiana 46902

Submitter : **Mr. Grant Gray** **Date: 09/28/2007**

Organization : **Adult and Child Mental Health Center**

Category : **Health Care Provider/Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2261-P-170-Attach-1.DOC

#170

DATE: 9-28-07

Centers for Medicare & Medicaid Services
Dept of Health and Human Services
Attention: CMS-2261-P
P.O. Box 8018
Baltimore, MD 21244-8018

To Whom It May Concern:

Reference: File code CMS-2261-P

I work for Adult and Child Mental Health Center, Inc. and would like to submit the following comments on the Proposed Rule for Coverage for Rehabilitative Services under the Medicaid program, as published in the Federal Register, August 13, 2007.

Adult and Child Mental Health Center is a Indiana state certified Joint Commission on Accreditation of Healthcare Organizations accredited community mental health center primarily serving seriously emotionally disturbed children and seriously mentally ill adults residing in Indianapolis, Indiana and Johnson County Indiana. Our organization provides recovery oriented behavioral health services to approximately four thousand three hundred (4300) registered clients each year. Our services include "evidence based treatments" such as Assertive Community Treatment, Integrated Dual Diagnosis Treatment, Supported Employment and Illness Management and Recovery. Our continuum of services include access to inpatient psychiatric care, residential treatment, therapeutic foster care, partial hospitalization, intensive outpatient therapy, home based counseling, and case management. Because our organization primarily serves a low income disabled population, Medicaid Rehab Option funding is our primary funding source supplemented by Division of Mental Health and Addiction funding, and Indiana Department of Child Services funding.

I have significant concerns with the proposed regulations, as they will create barriers to the recovery process for the children and adults that our agency serves. I would like to comment on the following four areas of the proposed rule:

440.130(d)(1)(vi) Definition of Restorative Services

This definition stipulates that restorative services are those that enable an individual to perform a function, and that the individual does not have to have actually performed the function in the past. This language is critical, as loss of function may have occurred long before restorative services are provided. This would be particularly true for children, as some functions may not have been possible (or age-appropriate) at an earlier date. The regulation needs modification to make the meaning of this section clearer.

This definition also includes as appropriate rehabilitation services those services designed to maintain current level of functioning but only when necessary to help an individual achieve a rehabilitation goal. While rehabilitation services should not be custodial, for people with serious mental or emotional disabilities, continuation of rehabilitative services are at times essential to retain their functional level. Most severe mental illnesses are marked by cyclical periods of sharp symptom exacerbation and remission, and the long-term clinical course of these conditions is difficult to determine. As an illustration, *Mental Health: A Report of the Surgeon General*, notes that for people living with schizophrenia, "..a small percentage (10 percent or so) seem to remain severely ill over long periods of time (Jablensky et al., 1992: Gerbaldo et al., 1995). While these individuals can significantly improve, "most do not return to their prior state of mental function." (Mental Health: Report of the Surgeon General, 1999, pg. 274).

Given this sobering clinical data, failure to provide a supportive level of rehabilitation would result in deterioration necessitating a reinstatement of intensive services. We are concerned that states and providers will interpret the current proposed regulation as prohibiting the coverage of services necessary for retention of improved functioning as well as maintaining the highest possible functional level, leading individuals to deteriorate to the point where they will not be eligible for services. This serves no one's interest.

Section 1901 of the statute specifically authorizes funds for rehabilitation and other services to help individuals retain capability for independence and self-care. This provides authority for CMS to allow states to furnish services that will maintain an individual's functional level.

Similarly, CMS in the Medicare program explicitly acknowledges the importance of maintenance of current functioning as an acceptable goal:

> For many other psychiatric patients, particularly those with long-term, chronic conditions, control of symptoms and maintenance of a functional level to avoid further deterioration or hospitalization is an acceptable expectation of improvement. "Improvement" in this context is measured by comparing the effect of continuing treatment versus discontinuing it. Where there is a reasonable expectation that if treatment services were withdrawn the patient's condition would deteriorate, relapse further, or require hospitalization, this criterion is met."

Medicare Hospital Manual, Chapter II, Section 230.5 Hospital Outpatient Psychiatric Services; Medicare Intermediary Manual, Part 3, Chapter II, Section 3112.7 Outpatient Hospital Psychiatric Services.

Additionally, The preamble and section 441.45(b) of the proposed rules exclude prevocational services. However, rehabilitative services should include prevocational services when they are provided to individuals that have experienced a functional loss.

Recommendation:

Further clarify that a child need not demonstrate that he or she was once capable of performing a specific task in the past if it were not possible or age-appropriate for the child to have done so. Specifically, the language should state that restorative services include services to enable a child to achieve age-appropriate growth and development and that it is not necessary that the child actually performed the activity in the past. (Note, this phrasing is taken from current CMS regulation of managed care plans at 42CFR 438.210(a)(4)(ii)(B)). An example of a child who was developmentally on track to perform a function, but did not because it was not yet age-appropriate would be helpful. Currently, the regulation only has an example of an adult.

Secondly, revise the definition of when services may be furnished to maintain functioning to include as an acceptable goal of a rehabilitation plan the retaining of functional level for individuals who can be expected to otherwise deteriorate.

Clarify that pre-vocational services are allowable services when appropriately tied to a rehabilitation goal.

440.130(viii)(3) Written Rehabilitation Plan

We do urge some amendments (see below). In addition, there are some issues where the regulation is unclear and issues are unaddressed. Without attention to our suggestions, this new requirement will add significantly to the administrative time and expense of agencies serving individuals in need of rehabilitative services.

For example, how does CMS expect providers to indicate progress towards the goals in the rehabilitation plan? The guiding factor should be that the service record includes information that is necessary for clinical purposes and that this information is presented in a way that meaningfully demonstrates the nature and course of services being provided.

Is it allowable for a service planning team to create a single plan of services that address both treatment issues and rehabilitation issues? Frequently in mental health service delivery clinical issues (such as medication and therapy) are planned in conjunction with rehabilitation needs (skill building, etc.). Requiring two separate planning processes and two separate planning documents is burdensome not only on providers but also on the individual consumer. Clearly,

multiple service plans do not facilitate coordination or accountability. The regulation does not prohibit a single plan of service, but it would be extremely helpful to the field if CMS could clarify that this is indeed preferable.

We are puzzled by the requirement that the plan include information on alternate providers of the same service. In almost all communities, the number of providers willing to accept Medicaid reimbursement is small. This reality is even more problematic in rural and frontier areas of the country. Expecting staff responsible for planning to now become familiar with alternate providers is an unreal expectation.

Person-centered planning requires the active participation of the individual. CMS further recommends the involvement of the consumer's family, or other responsible individuals. However, requiring the signature of the client or representative in some rare cases may be problematic. There are two factors to consider.

First, severe mental illness is episodic, and it is not always possible to determine when an exacerbation of the illness may occur. There may be instances in which a person, because of the symptoms of their illness, may not believe they are sick or comply with the signing the treatment plan, and it is also true, that at this point in the individual's life, retention of services are critical to prevent hospitalization, incarceration, or other public or personal safety consequences. There is also no guarantee that the individual has appointed a representative, or that the consumer in crisis could identify this person. Therefore, CMS should allow for the documentation by the provider who meets state requirements of reasons that the client, or their representative is not able to sign the treatment plan.

Recommendations:

We recommended inclusion of the following requirements regarding the written rehabilitation plan:

X that this plan be written in plain English so that it is understandable to the individual.

X that the plan include an indication of the level of participation of the individual as well as his or her concurrence with the plan. CMS should allow for the documentation by the provider who meets state requirements of reasons that the client, or their representative is not able to sign the treatment plan.

X that the plan of services be based on a strengths-based assessment of needs;

X that the plan include intermediate rehabilitation goals;

X that, as indicated, the plan include provisions for crisis intervention;

- X that the plan include individualized anticipated review dates relevant to the anticipated achievement of long-range and intermediate rehabilitation goals;

- X substitute for the requirement that the plan list the potential alternate providers of the same service a requirement that the plan include an assurance that the individual has received this information (to the extent the service planning team is aware of all existing providers.

CMS should also clarify that a single treatment and rehabilitation plan is acceptable and encourage a single planning team and service planning meetings.

<u>Section 441.45: Rehabilitative Services</u>

<u>441.45(a)(2)</u>

This section limits rehabilitative services to those furnished for the maximum reduction of physical or mental disability and restoration of the individual to their best possible functional level, as defined in the law. However, it would be helpful to reiterate here when services may be furnished to retain or maintain functioning (see comments above).

It would also be valuable to include the language in the preamble (page 45204) regarding how to determine whether a particular service is a rehabilitation service, based on its purpose.

<u>Recommendation</u>:

Insert additional language into 441.45(a)(2) to describe when services may be furnished with the goal of retaining or maintaining functioning.

Insert additional language into this section (from the preamble) to state that it is helpful to scrutinize the purpose of the service as defined in the care plan in order to determine whether a specific service is a covered rehabilitative benefit.

<u>441.45(b) Non-covered services</u>

This section introduces a whole new concept into Medicaid, one that conflicts with federal statutory requirements. It denies Medicaid coverage for covered services to covered individuals if such services are furnished through another program, including when they are considered intrinsic elements of that program. There are many mechanisms that states and localities use to fund mental health services for persons who are uninsured or underinsured. These programs frequently operate on capped appropriations distributed through grants to providers. This is a very different situation from when an individual has other insurance (where the insurer has a contracted legal liability to pay) or when an agency has already received a federal payment to meet a specific need of a particular person (such as through Title IV-E for certain case

management services).

There is little clarity in the regulation on how this provision would be applied as the regulation provides no guidance on how to determine whether a service is an intrinsic element of another program.

We can see only two situations in which Medicaid might have been paying for services that fall under this test. Either a provider bills Medicaid for a service which is not a Medicaid-covered service in which case this is a fraud-abuse issue and does not warrant a change in rule for all providers and systems. Or, CMS is concerned that non-medical programs are furnishing Medicaid covered services (and meeting all Medicaid requirements) but have other resources available to them for providing the service (even though these other resources are generally targeted to non-Medicaid individuals). In the latter case, what is the legal basis for denying federal financial participation for the Medicaid-covered individual?

Furthermore, few of the other cited programs have a clear legal obligation to provide these services or have the resources to do so. Without revision, this new rule would conflict with the federal statutory mandate to provide all medically necessary services covered by the state Medicaid plan, and for children, all medically necessary services covered by 42 U.S.C. § 1396d(a). See 42 U.S.C. §§ 1396a(a)(10), 1396?? (1396d(r)). The net result of this new rule will be that Medicaid-eligible individuals will be denied services, both by Medicaid and by the other cited program (due to lack of resources in the other program). Thus, the rule effectively denies them medically necessary Medicaid services, in direct contradiction of the statute.

<u>Recommendation</u>:

We strongly recommend that this entire section be dropped, because it conflicts with the Medicaid statute.

Alternatively, the section should be clarified and narrowed so as to specifically focus on situations where an entity (e.g. an insurer) has a specific legal obligation to pay for the services for the specific Medicaid-covered individual. Programs operated through capped or discretionary appropriations from states or localities should be specifically excluded from this provision.

Some subsections of Section 441.45(b) include language that ensures that children in the other settings that are cited (therapeutic foster care, foster care or child care institutions for a foster child) can nonetheless receive medically-necessary rehabilitation services if those services are provided by qualified Medicaid providers. This phrase should be inserted under paragraph (b)(1) so that it will apply to all of the subsections (i) through (iv).

The preamble states that Medicaid-eligible individuals in other programs are entitled to all rehabilitative services that would have been provided to individuals outside of those other programs. The preamble also makes clear that Medicaid rehabilitative services must be

coordinated with services furnished by other programs. The regulation should include this language.

It is especially important that mental health providers be able to work with children and adults with serious mental disorders in all appropriate settings. For children, the school day can be an especially critical time. While classroom aides may not be eligible mental health providers, the presence of a mental health provider in the classroom to address a specific child's functional impairments should be a covered service.

Similarly, a child with a serious mental disorder being reunified with its family may have specific issues directly stemming from the mental disorder. Mental health rehabilitation services to address these problems (as distinct from generic reunification services) should be covered.

To the extent that any of these proposals become final, CMS must work with States to develop implementation timelines that account for legislative review of waivers in states where this is necessary, as well as adequate time for administrative and programmatic changes at both the state and provider agency level. The development of new forms as well as staff training, administrative processes all pose significant challenges at the Agency level. At a minimum, States should be granted a one-year planning and implementation period from the time of approval of the State Plan Amendment by the Agency.

DRAFT

Thank you for the opportunity to comment on the proposed regulation.

Sincerely,

Grant Gray, MS, MHA
Associate Director of Child and Adolescent Services

CC: Members of the Indiana State Congressional Caucus
The Honorable Mitch Daniels, Governor of the state of Indiana

Submitter : **Mr. Danial Merk** **Date: 09/28/2007**

Organization : **Mr. Danial Merk**

Category : **Individual**

Issue Areas/Comments

Background

Background

Halbiation vs. Rehabilation or just dropt the whole thing....

Collections of Information Requirements

Collections of Information Requirements

For years Pennsylvania and New Jersey have run community based services that do nothing more then eat the federal dollars- while promoting waste fraud and abuse. In 2000, Pa had a brief moment in whieh it attempted to correct this problem. In March of that year, it released a draft of proposed measures to increase accountablity titled "Annex A Part III. Medical Assistance Manual- Title 55 Public Welfare. Chapter 1154. Outpatients Behavioral Health Services- General provisions." Providers in fear of loosing the cash cow of wrap around opposed the document and the department bulked. Nothing has changed in the past seven years. Service quality remains low often provided by people with little to no mental health training. New Jersey has had similar problems for the same reasons- little oversight, poorly trained staff, and a host of overperscribed hours. The time has come to make changes but it seems that the proposed change goes to far- rather then acheive improved services with reduced cost- it seeks just to cut costs. Sadly, this will leave many children who could be helped without help. I would suggest more money to enforcement- particularly in the cities where services seem to be out of control and often covering non-therapeutic expenses such as summer camp programs for the poor and disadvanaged. Medical moneies should not be used in these social service ways. Services should only be rendered by clearly defined competent professionals- indeed, this is one of the strenghts of No Child Left Behind- "highly qaulified" staff.

State should receive incentives to cut down on these problems and investigate claims of waste, fraud, and abuse.

GENERAL

GENERAL

One start would be the release of that draft bulletin as the final form. This would save the state and the Federal government much more then could be saved with the projected savings for the Pa area from the current change.

Provisions of the Proposed Rule

Provisions of the Proposed Rule

Please see the below article for a copy of just how bad waste, fraud and abuse have become in New Jersey:

Problems beset program for troubled kids
Oversight and training fall short in state's home-therapy initiative
Sunday, August 26, 2007
BY SUSAN K. LIVIO AND MARY JO PATTERSON
Star-Ledger Staff

It was intended as a bold response to a challenging question: how to help thousands of emotionally disturbed and mentally ill children without sending them to institutions, hospitals or jails.

New Jersey's answer: Hire private therapists and hundreds of aides to treat them in their own homes.

The solution is now five years old and has cost the public an estimated $100 million. But to date the state has provided virtually no oversight for the therapists, failed to train or certify the aides, and in the view of many parents, provided treatment that amounted to little more than a baby-sitting service.

According to a review of internal government documents and interviews with some 50 parents and professionals, since its start in 2002 the Intensive In-Home Community Treatment and Behavioral Assistance Program has:

Received more than 140 complaints from parents and others, alleging everything from workers not showing up to threatening violence. One "behavioral assistant" abandoned a child at a miniature golf course. Another did personal errands, often disappearing with the child for hours. Four cases have triggered Medicaid fraud investigations.

Deployed hundreds of behavioral assistants into fragile home situations without clearly defining their job. To get hired, the assistants needed only a high school diploma and a car.

Paid, with state and federal funds, unusually high fees to assistants and therapists. The hourly rate for a behavioral assistant, $39 an hour, is $13 more than what a licensed, office-based psychologist earns.

Officials with the New Jersey Division of Child Behavioral Health Services acknowledge they need tighter controls on the program and admit they have no data showing fewer children have been institutionalized. They say a review of the program is under way, but they believe the concept behind in-home therapy is sound.

"I am confident there are thousands of children who are the better for the system of care, who avoided hospitalization and long-term illness as a result of this," said Kevin Ryan, commissioner of the Department of Children and Families, which administers the program through its Child Behavioral Health division.

Practitioners of traditional counseling say New Jersey has over-prescribed and under-regulated home therapy for children.

Jim Lape, a psychiatrist and vice president of behavioral health and psychiatry at Trinitas Hospital in Elizabeth, said the program is ripe for fraud and abuse.

"They threw this service out there and billed it up and haven't evaluated it. It's absurd," he said.

Lape, whose hospital manages care for children with behavioral problems or mental illness, said his staff last month caught a behavioral assistant billing for 19 nonexistent home visits with one family and 15 other fake visits with a second family.

Richard Mingoia, president and CEO of Youth Consultation Services in Newark, one of New Jersey's largest family service providers, said he fears many behavioral aides are not qualified to treat vulnerable kids.

CMS-2261-P-172

Submitter : **Dr. Michael McDonell** **Date: 09/28/2007**

Organization : **Children's hospital, seattle**

Category : **Other Practitioner**

Issue Areas/Comments

GENERAL

GENERAL

Please do not discontinue funding for children and adults who need evidence based treatments the most. These services are already extremely difficult to access and they are costly to develop and impliment, yet over the long term they save money and improve outcomes.

Submitter : **Date: 09/28/2007**

Organization :

Category : **Long-term Care**

Issue Areas/Comments

Background

Background

Long term care for the mentally ill will reduce costs and increase the quality of life. My daughter is a testatment to this. Please expand benefits for the mentally ill.

Collections of Information Requirements

Collections of Information Requirements

Daughter with schizophrenia.

Submitter : **Date: 09/28/2007**

Organization :

Category : Social Worker

Issue Areas/Comments

Background

Background

Non-covered services: 441.45(b)

This section introduces a whole new concept into Medicaid, one that conflicts with federal statutory requirements. It denies Medicaid coverage for covered services to covered individuals if such services are furnished through another program, including when they are considered "intrinsic elements" of that program. There is little clarity in the regulation on how this provision would be applied, as the regulation provides no guidance on how to determine whether a service is an "intrinsic element" of another program.

There appear to be only two situations in which Medicaid might have been paying for services that fall under this test. Either a provider bills Medicaid for a service which is not a Medicaid-covered service B, in which case this is a fraud-abuse issue and does not warrant a change in rule for all providers and systems. Or CMS is concerned that non-medical programs are furnishing Medicaid-covered services (and meeting all Medicaid requirements) but have other resources available to them for providing the service (even though these other resources are generally targeted to non-Medicaid individuals). In the latter case, what is the legal basis for denying federal financial participation for the Medicaid-covered individual?

Furthermore, few of the other cited programs have a clear legal obligation to provide these services or have the resources to do so. Without revision, this new rule would conflict with the federal statutory mandate to provide all medically necessary services covered by the state Medicaid plan, and for children, all medically necessary services covered by 42 U.S.C. ? 1396d(a). See 42 U.S.C. ?? 1396a(a)(10), 1396d(r). The net result of this new rulc will be that Medicaid-eligible individuals will be denied services, both by Medicaid and by the other cited program (due to lack of resources in the other program). Thus, the rule effectively denies them medically necessary Medicaid services, in direct contradiction of the statute.

Recommendation:

It is strongly recommend that this entire section be dropped, because it conflicts with the Medicaid statute.

Alternatively, the section should be clarified and narrowed so as to focus on situations where an entity (e.g. an insurer) has a specific legal obligation to pay for the services for the specific Medicaid-covered individual. Programs operated through capped or discretionary appropriations from states or localities should be specifically excluded from this provision.

Rehabilitative Services : 441.45(a)(2)-

This section limits rehabilitative services to those furnished for the maximum reduction of physical or mental disability and restoration of the individual to the best possible functional level, as defined in the law. However, it would be helpful to reiterate here when services may be furnished to retain or maintain functioning.

It would also be valuable to include the language now in the preamble (page 45204) regarding how to determine whether a particular service is a rehabilitation service, based on its purpose.

Recommendation:

Insert additional language into 441.45(a)(2) to describe when services may be furnished with the goal of retaining or maintaining functioning.

Insert additional language into this section (from the preamble) to state that it is helpful to scrutinize the purpose of the service as defined in the care plan in order to determine whether a specific service is a covered rehabilitative benefit.

Submitter : **Horace Chavez** **Date: 09/28/2007**

Organization : **NAMI New Mexico**

Category : **Congressional**

Issue Areas/Comments

GENERAL

GENERAL

Rehabilitation services can change the course of a person s life. Our experiences tell us what a difference they can make. The research data confirms what we already know services are very effective at reducing symptoms, keeping people out of hospitals, and allowing people to live better lives in the community.

We know what works. But we also know that too many people can t access these treatments. And the terrible consequences are seen in every jail and prison in America.
The federal government should be doing everything possible to encourage states to provide better and more effective services for people living with mental illnesses.
We do not want to see billions of dollars taken out of the Medicaid funded system of care for people with mental illnesses. We do not want to see adults and children ignored and left behind in school, work, and life.

We ask that you revise these regulations to make it clear that the federal government encourages any state system to do all they can to provide effective treatments to people with serious mental illnesses.

Submitter : **Ms. Cindy Nelson** **Date: 09/28/2007**

Organization : **Ms. Cindy Nelson**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2261-P-176-Attach-1.DOC

#176

September 28, 2007

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention CMS-2261-P
P.O. Box 8018
Baltimore, MD 21244-8018

Re: File Code CMS-2261-P. Proposed Regulations on Coverage for Rehabilitative Services.

Dear Sir or Madam:

Thank you for providing opportunities for individuals living with mental illness and their family members to provide comments on the proposed rule regarding coverage for rehabilitative services under the Medicaid program. I am writing as a member of The National Alliance on Mental Illness (NAMI), the nation's largest grassroots organization representing individuals living with serious mental illnesses and their families. As members of NAMI, we have lived experience with mental illness and bring that unique perspective to our comments on these rules.

We know from personal experience that access to rehabilitative services can make all the difference in a person's life. We have seen people get services to help them recover from their illness. With services and support, individuals with serious mental illness can and do live very well in the community and have strong relationships with family and friends. We have also seen those who can't get help and have seen the pain and trauma from untreated mental illness for the individual and his or her family. Often the person will have multiple stays in hospitals and jails.

NAMI conducted a survey of the 50 state mental health agencies for our *Grading the States* report and found what individuals with mental illness and their family members already know – in all the states, there are gaps in services and many people with serious mental illnesses are not getting the help that they need. The average state grade was a D. So we know that there is much work to be done to ensure that people can get the treatment they need when they need it. NAMI members know that treatment works, if you can get it.

As a result, we are very troubled by the estimate in the proposed regulation that these rules would save the federal government 2.2 billion dollars. Our experiences tell us that creating barriers to vital services will not save money in the long run. Rather, it will increase the costs from hospitalization, incarceration and other bad outcomes that result from a failure to get needed treatment.

We appreciate the emphasis on recovery in the rules. All individuals with mental illness and their families want the system to make it easier to recover. We also like the provisions about the participation of the individual and their family in the rehabilitative

plan and receiving copies of the plan so we can hold the system accountable. We would like to see some flexibility to make sure that providers can still do outreach and provide crisis care, but we very much appreciate the agency's intent to encourage communication between providers, the individual and family members.

However, we have a few areas of deep concern where we hope the agency will reconsider its rules. We would like to see services provided to help prevent deterioration of an individual. We also would like to see other systems encouraged, not discouraged, from providing help to adults and children with serious mental illnesses.

Section 440.130(d)(1)(v) and 440.130(d)(3) Rehabilitation Plan:

The proposed regulations require that a written rehabilitation plan set out the services that will be provided. The plan is to be written with the involvement of the individual and the family. We very much applaud the agency for including the person and the family in the planning and for encouraging person centered planning.

We would like to see some flexibility in the rules to allow providers to conduct outreach to individuals who may not be ready to be part of a formal treatment planning process. Sometimes, it takes repeated visits before a person is ready and understands how treatment will be a benefit to him or her.

In addition, there are times when a person is in crisis and needs help. At that point, they might not be able to be part of a planning process. If they are new to a community or have recently been in the hospital or jail, they also may not have a treatment plan on record. The rules should allow treatment in these narrow circumstances.

Recommendation:

Clarify the provisions in the regulation to allow payment for outreach and emergency services.

Section 440.130(d)(1) Rehabilitation and Restorative Services:

Under the proposed regulations and the preamble, rehabilitative goals have to be targeted at progress. They can't be used to maintain stability unless that is linked to another goal where they are still working on improvement. But mental illness does not work in a straight line upward. For many of us and our loved ones, the path to recovery is not straight up or down. It is often a process with periods of progress and periods where symptoms may have to be closely managed to prevent deterioration. The changing course of serious mental illness must be factored into the proposed regulations governing rehabilitative services.

For some of us and our family members who have been hospitalized or in jail, staying stable and in housing is not easy and is an achievement. It also requires services so we

do not deteriorate and get worse. We hope the agency will adjust its regulations to take into account the nature of our illnesses and those of our family members and allow services to prevent deterioration of the illnesses.

Recommendation:

Revise the proposed rule to allow payment for rehabilitative services to prevent deterioration as well as to restore functioning.

Section 441.45(b) Exclusion of services, including those that are an "intrinsic element" of other programs:

Many adults and children with mental illness and their families are also part of other service systems– including criminal justice, juvenile justice, education, housing, and child welfare. In my community, people with mental illness are overrepresented in these systems and we face major challenges to make sure that people with mental illness do not fall through the cracks.

The proposed regulations could make that challenge much more difficult. We are just starting to see some of these other systems provide the help that people with mental illness need. If these regulations are a barrier to getting federal dollars for some of the costs, then other systems will either stop providing the care or they will stop serving people with mental illness. Either way, people with mental illness and their family members are the ones who will get hurt.

We have reviewed this proposed regulation and the preamble and we do not know how to determine whether something is "intrinsic" to another system. We urge the agency to use terms and factors that are easily understandable by those who use these services and their families as well as state policymakers.

Finally, Medicaid is a program that people rely upon to pay for their care. If Medicaid is required to pay for healthcare services, then it should not matter whether the service is "intrinsic" to another system. It is important that Medicaid remain a reliable source of payment for people.

Recommendation:

Delete all references to other systems and pay for rehabilitative services for individuals with serious mental illnesses when they need them and where they need them.

Section 441.45(b) Exclusions for therapeutic foster care and classroom aides:

Many children with mental illnesses rely upon therapeutic foster care. This is a service that works well and creates good outcomes such as going to school more, staying out of trouble with law enforcement, and living in a stable place. The proposed regulations

should give states the ability to get federal resources to support this effective service as long as the services are rehabilitative.

The proposed regulations say that the federal government will not provide resources for recess aides or classroom aides. We believe that the rule also needs to clearly inform schools that Medicaid will pay for behavior aides and other mental health providers who are giving services to a particular child. Children with mental illnesses and their families have been fighting a long battle to get mental heath services provided to children in schools and this regulation should support that effort by clearly encouraging school based mental health services.

Recommendation:

Amend the proposed rule to allow therapeutic foster care and let states combine the services in one rate if that works best for them. The federal government can meet its goals by making sure that the rate only includes rehabilitative services.

Amend the regulation to say that the exclusion does not include behavior aides or other related service providers who are providing services to a particular child.

Section 441.45(b)(2) Exclusion for Mental Retardation and other conditions and Habilitation Services:

The proposed regulations prohibit people with mental retardation or related conditions, like cerebral palsy, to get rehabilitation services. As advocates for one group – people with mental illness – we do not support the exclusion of any other group on the basis of their disability.

We also understand that Congress asked the federal agency to determine which habilitation services to cover. It did not give the agency the option to ban all habilitation services.

Recommendation:

The proposed rules should not exclude people with mental retardation and related conditions and habilitation services.

Conclusion:

Rehabilitation services can change the course of a person's life. Our experiences tell us what a difference they can make. The research data confirms what we already know – services are very effective at reducing symptoms, keeping people out of hospitals, and allowing people to live better lives in the community.

We know what works. But we also know that too many people can't access these treatments. And the terrible consequences are seen in every jail and prison in America.

The federal government should be doing everything possible to encourage states to provide better and more effective services for people living with mental illnesses. We do not want to see billions of dollars taken out of the Medicaid funded system of care for people with mental illnesses. We do not want to see adults and children ignored and left behind in school, work, and life.

We ask that you revise these regulations to make it clear that the federal government encourages any state system to do all they can to provide effective treatments to people with serious mental illnesses.

Thank you,

Cindy Nelson

Submitter : **Dr. Allan Peters**

Organization : **NAMI of AZ**

Date: 09/28/2007

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2261-P-177-Attach-1.DOC

#177

September 27, 2007

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention CMS-2261-P
P.O. Box 8018
Baltimore, MD 21244-8018

Re: File Code CMS-2261-P. Proposed Regulations on Coverage for Rehabilitative Services.

Dear Sir or Madam:

Thank you for providing opportunities for individuals living with mental illness and their family members to provide comments on the proposed rule regarding coverage for rehabilitative services under the Medicaid program. I am writing as a member of The National Alliance on Mental Illness (NAMI), the nation's largest grassroots organization representing individuals living with serious mental illnesses and their families. As members of NAMI, we have lived experience with mental illness and bring that unique perspective to our comments on these rules.

We know from personal experience that access to rehabilitative services can make all the difference in a person's life. We have seen people get services to help them recover from their illness. With services and support, individuals with serious mental illness can and do live very well in the community and have strong relationships with family and friends. We have also seen those who can't get help and have seen the pain and trauma from untreated mental illness for the individual and his or her family. Often the person will have multiple stays in hospitals and jails.

NAMI conducted a survey of the 50 state mental health agencies for our *Grading the States* report and found what individuals with mental illness and their family members already know – in all the states, there are gaps in services and many people with serious mental illnesses are not getting the help that they need. The average state grade was a D. So we know that there is much work to be done to ensure that people can get the treatment they need when they need it. NAMI members know that treatment works, if you can get it.

As a result, we are very troubled by the estimate in the proposed regulation that these rules would save the federal government 2.2 billion dollars. Our experiences tell us that creating barriers to vital services will not save money in the long run. Rather, it will increase the costs from hospitalization, incarceration and other bad outcomes that result from a failure to get needed treatment.

We appreciate the emphasis on recovery in the rules. All individuals with mental illness and their families want the system to make it easier to recover. We also like the provisions about the participation of the individual and their family in the rehabilitative

plan and receiving copies of the plan so we can hold the system accountable. We would like to see some flexibility to make sure that providers can still do outreach and provide crisis care, but we very much appreciate the agency's intent to encourage communication between providers, the individual and family members.

However, we have a few areas of deep concern where we hope the agency will reconsider its rules. We would like to see services provided to help prevent deterioration of an individual. We also would like to see other systems encouraged, not discouraged, from providing help to adults and children with serious mental illnesses.

Section 440.130(d)(1)(v) and 440.130(d)(3) Rehabilitation Plan:

The proposed regulations require that a written rehabilitation plan set out the services that will be provided. The plan is to be written with the involvement of the individual and the family. We very much applaud the agency for including the person and the family in the planning and for encouraging person centered planning.

We would like to see some flexibility in the rules to allow providers to conduct outreach to individuals who may not be ready to be part of a formal treatment planning process. Sometimes, it takes repeated visits before a person is ready and understands how treatment will be a benefit to him or her.

In addition, there are times when a person is in crisis and needs help. At that point, they might not be able to be part of a planning process. If they are new to a community or have recently been in the hospital or jail, they also may not have a treatment plan on record. The rules should allow treatment in these narrow circumstances.

Recommendation:

Clarify the provisions in the regulation to allow payment for outreach and emergency services.

Section 440.130(d)(1) Rehabilitation and Restorative Services:

Under the proposed regulations and the preamble, rehabilitative goals have to be targeted at progress. They can't be used to maintain stability unless that is linked to another goal where they are still working on improvement. But mental illness does not work in a straight line upward. For many of us and our loved ones, the path to recovery is not straight up or down. It is often a process with periods of progress and periods where symptoms may have to be closely managed to prevent deterioration. The changing course of serious mental illness must be factored into the proposed regulations governing rehabilitative services.

For some of us and our family members who have been hospitalized or in jail, staying stable and in housing is not easy and is an achievement. It also requires services so we

do not deteriorate and get worse. We hope the agency will adjust its regulations to take into account the nature of our illnesses and those of our family members and allow services to prevent deterioration of the illnesses.

Recommendation:

Revise the proposed rule to allow payment for rehabilitative services to prevent deterioration as well as to restore functioning.

Section 441.45(b) Exclusion of services, including those that are an "intrinsic element" of other programs:

Many adults and children with mental illness and their families are also part of other service systems– including criminal justice, juvenile justice, education, housing, and child welfare. In my community, people with mental illness are overrepresented in these systems and we face major challenges to make sure that people with mental illness do not fall through the cracks.

The proposed regulations could make that challenge much more difficult. We are just starting to see some of these other systems provide the help that people with mental illness need. If these regulations are a barrier to getting federal dollars for some of the costs, then other systems will either stop providing the care or they will stop serving people with mental illness. Either way, people with mental illness and their family members are the ones who will get hurt.

We have reviewed this proposed regulation and the preamble and we do not know how to determine whether something is "intrinsic" to another system. We urge the agency to use terms and factors that are easily understandable by those who use these services and their families as well as state policymakers.

Finally, Medicaid is a program that people rely upon to pay for their care. If Medicaid is required to pay for healthcare services, then it should not matter whether the service is "intrinsic" to another system. It is important that Medicaid remain a reliable source of payment for people.

Recommendation:

Delete all references to other systems and pay for rehabilitative services for individuals with serious mental illnesses when they need them and where they need them.

Section 441.45(b) Exclusions for therapeutic foster care and classroom aides:

Many children with mental illnesses rely upon therapeutic foster care. This is a service that works well and creates good outcomes such as going to school more, staying out of trouble with law enforcement, and living in a stable place. The proposed regulations

should give states the ability to get federal resources to support this effective service as long as the services are rehabilitative.

The proposed regulations say that the federal government will not provide resources for recess aides or classroom aides. We believe that the rule also needs to clearly inform schools that Medicaid will pay for behavior aides and other mental health providers who are giving services to a particular child. Children with mental illnesses and their families have been fighting a long battle to get mental heath services provided to children in schools and this regulation should support that effort by clearly encouraging school based mental health services.

Recommendation:

Amend the proposed rule to allow therapeutic foster care and let states combine the services in one rate if that works best for them. The federal government can meet its goals by making sure that the rate only includes rehabilitative services.

Amend the regulation to say that the exclusion does not include behavior aides or other related service providers who are providing services to a particular child.

Section 441.45(b)(2) Exclusion for Mental Retardation and other conditions and Habilitation Services:

The proposed regulations prohibit people with mental retardation or related conditions, like cerebral palsy, to get rehabilitation services. As advocates for one group – people with mental illness – we do not support the exclusion of any other group on the basis of their disability.

We also understand that Congress asked the federal agency to determine which habilitation services to cover. It did not give the agency the option to ban all habilitation services.

Recommendation:

The proposed rules should not exclude people with mental retardation and related conditions and habilitation services.

Conclusion:

Rehabilitation services can change the course of a person's life. Our experiences tell us what a difference they can make. The research data confirms what we already know – services are very effective at reducing symptoms, keeping people out of hospitals, and allowing people to live better lives in the community.

We know what works. But we also know that too many people can't access these treatments. And the terrible consequences are seen in every jail and prison in America.

The federal government should be doing everything possible to encourage states to provide better and more effective services for people living with mental illnesses. We do not want to see billions of dollars taken out of the Medicaid funded system of care for people with mental illnesses. We do not want to see adults and children ignored and left behind in school, work, and life.

We ask that you revise these regulations to make it clear that the federal government encourages any state system to do all they can to provide effective treatments to people with serious mental illnesses.

Thank you,

Dr. Allan Peters
Mesa, AZ

Submitter : **Mrs. Jean Meister** **Date: 09/28/2007**

Organization : **Mrs. Jean Meister**

Category : **Individual**

Issue Areas/Comments

Background

Background

Anything that limits access to care and rehabilitation services will make it so mucb harder for a person with mental illness to be independent and productive. My daughter, who has bipolar disorder, functions at a very high level with support. Without this assistance, she would need frequent hospitalizations and could not hold a job. The impact on her life, and on the public, would be profound.

Submitter : **Ms. Lisa Hendrickson** **Date: 09/28/2007**

Organization : **Kenneth Young Center**

Category : **Other Health Care Professional**

Issue Areas/Comments

Background

Background

Section 440.130(d)(1)(v) and 440.130(d)(3) Rehabilitation Plan

The proposed regulations require that a written rehabilitation plan (with the involvement of the individual) set out the services that will be provided. I applaud the agency for including the person and their support network and for encouraging person centered planning. However, some flexibility in the rules needs to be created to allow providers to conduct outreach to individuals who may not be ready to be part of a formal treatment planning process. Sometimes, it takes repeated visits before a person is ready and understands how treatment will be a benefit. There are times when a person is in crisis and needs help. At that point, they might not be able to be part of a planning process. If they are new to a community or have recently been in the hospital or jail, they also may not have a treatment plan on record. The rules should allow treatment in these narrow circumstances.

My recommendation is to clarify the provisions in the regulation to allow payment for outreach and emergency services.

I have seen firsthand individuals who have required crisis intervention services prior to developing a treatment plan with their service providers. The intervention I and my colleagues have provided has prevented numerous hospitalizations, suicides, and illegal activity. Because the clients I work with are homeless or on disability, the financial cost of these results would have been the responsibility of the government. As you know, this is much more expensive than paying service providers for a few hours of crisis intervention and case management linkage.

Section 440.130(d)(1) Rehabilitation and Restorative Services:

Under the proposed regulations and preamble, rehabilitative goals have to be targeted at progress. It states these services can t be used to maintain stability unless that is linked to another goal where they are still working on improvement. But mental illness does not work in a straight line upward. For many clients, the path to recovery is not straight up or down. It is often a process with periods of progress and periods where symptoms may have to be closely managed to prevent deterioration. The changing course of serious mental illness must be factored into the proposed regulations governing rehabilitative services.

For my clients who have been hospitalized or in jail, staying stable and in housing is not easy and is an achievement. It requires services so that they do not deteriorate and get worse. I hope the agency will adjust its regulations to take into account the nature of our illnesses and those of our family members and allow services to prevent deterioration of the illnesses.

Recommendation:

Revise the proposed rule to allow payment for rehabilitative services to prevent deterioration as well as to restore functioning.

Section 441.45(b) Exclusion of services, including those that are an intrinsic element of other programs:

Many people with mental illness are also part of other service systems including criminal justice, education, housing, and welfare. In my work, people with mental illness are overrepresented in these systems and face major challenges.

The proposed regulations could make that challenge much more difficult. Luckily, we are just starting to see some of these other systems provide the help that people with mental illness need. If these regulations are a barrier to getting federal dollars for some of the costs, then other systems will either stop providing the care or they will stop serving people with mental illness. Either way, people with mental illness and their family members are the ones who will get hurt.

We have reviewed this proposed regulation and the preamble and we do not know how to determine whether something is intrinsic to another system. We urge the agency to use terms and factors that are easily understandable to state policymakers.

Collections of Information Requirements

Collections of Information Requirements

Section 441.45(b)(2) Exclusion for Mental Retardation and other conditions and Habilitation Services:

The proposed regulations prohibit people with mental retardation or related conditions, like cerebral palsy, to get rehabilitation services. As advocates for one group people with mental illness we do not support the exclusion of any other group on the basis of their disability.

We also understand that Congress asked the federal agency to determine which habilitation services to cover. It did not give the agency the option to ban all habilitation services.

Recommendation:

The proposed rules should not exclude people with mental retardation and related conditions and habilitation services.

GENERAL

GENERAL

September 28, 2007

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention CMS-2261-P
P.O. Box 8018
Baltimore, MD 21244-8018

Re: File Code CMS-2261-P. Proposed Regulations on Coverage for Rehabilitative Services.

Dear Sir or Madam:

Thank you for providing opportunities for individuals living with mental illness, mental health care providers, and concerned citizens to provide comments on the proposed rule regarding coverage for rehabilitative services under the Medicaid program.

I am a mental health professional who specialized in vocational rehabilitation and work closely with the Department of Human Services/Office of Rehabilitation in Illinois. I know first hand how important and beneficial rehabilitation services can be to an individual and the community. I have helped many people obtain gainful employment and utilize private employers for their health insurance. This has directly led to many people getting off of unemployment, social security disability, food stamps, Medicaid, and many other federal and state funded services. I would not be able to do the work I do without rehabilitation funding. My clients would not have the chance or opportunity to become a contributing member of society without rehabilitation services.

I am very troubled by the estimate in the proposed regulation that these rules would save the federal government 2.2 billion dollars. My experiences have proven that creating barriers to vital services will not save money in the long run. Rather, it will increase the costs from hospitalization, incarceration, extended time on Medicare, Medicaid, and Disability benefits. This actually ends up costing the federal and state governments money that could have been funneled through the private sector.

I applaud the emphasis on recovery in the rules. All individuals with mental illness and service providers want the system to make it easier to recover. I especially like the provisions about the participation of the individual and their family in the rehabilitative plan and receiving copies of the plan so we can hold the system accountable. My organization, Kenneth Young Center, has been doing this for years and has gotten incredible feedback from our clients compared with similar service providers in the area. However, I would like to see some assurance that there is enough flexibility to make sure providers can still do outreach and provide crisis care.

I do have a few specific areas of deep concern. I am hoping the agency will consider the feedback from various professionals and individuals and reconsider its rules. I would like to see services provided to help prevent deterioration of an individual. This would include encouraging other systems from providing help to adults and children with serious mental illnesses.

Rehabilitation services can change the course of a person s life. They are very effective at reducing symptoms, keeping people out of hospitals, and allowing people to live better lives in the community. Not only is this the right thing to do as a nation, it is the most financially and economical solution.

Provisions of the Proposed Rule

Provisions of the Proposed Rule

Section 440.130 Diagnostic, screening, preventative, and rehabilitative services.

Section 440.130(d)(1)(iii) Definition of qualified providers of rehabilitative services

This section provides general requirements for providers of rehabilitative services. While I fully support choice for clients of services, we request clarification that schools and other systems could be reimbursed under Medicaid for services provided by employees of that system who meet Medicaid provider requirements. For example, it is often most efficient for schools to hire a therapist or behavioral aide rather than contract with an outside provider. This also allows for proper training and accountability.

There are great barriers to coordinating services and supports so I would like to ensure that the burden is not shifted to consumers and their families to find service providers who will accept Medicaid because other systems such as education are no longer providing someone to give the service. Nothing in the current regulations prohibits schools and other systems from using their own employees, but CMS should clarify in the preamble that such practices are permissible as long as individuals are informed of their choice to seek another Medicaid provider if they wish to do so.

Section 440(d)(1)(vii) Definition of Medical Services

The proposed regulations provide that medical services are those required for the diagnosis, treatment or care of a physical or mental disorder. It would be helpful to clarify that rehabilitation services include a functional assessment of the individual. It is critical for a provider to attain the correct diagnosis, but our members experiences indicate that individuals with the same diagnosis may have very different rehabilitative goals and services based on their current functional level and their stage of recovery from the illness. Accordingly, we recommend that CMS amend this section to specifically include functional assessment or to indicate in the preamble that such an assessment is part of the meaning of diagnosis. This would provide consistency with later requirements in the proposed regulation for a rehabilitation plan which must be based on a comprehensive assessment& including diagnosis and presence of a functional impairment in daily living.

Recommendation:

Add bolded language: services that are required for the diagnosis, assessment, treatment or care of a physical or mental disorder&

Section 440.130(d)(5) Settings

This section of the regulation can be very helpful in reinforcing that rehabilitative services may be provided in natural settings and build upon natural supports. However, NAMI urges CMS to revise the preamble language which gives states the authority to determine the setting for the service. Rehabilitation services should be available in whatever setting will yield the best results and the appropriate setting should be determined as part of the rehabilitation planning process with input from the individual with mental illness and his or her family.

We also recommend adding to the settings listed in the proposed regulations to clarify that rehabilitative services can be provided in setting such as schools, workplaces and in the community. Assertive community treatment and mobile crisis, for example, often take place in the community and outside of a home or facility. The preamble includes some of these settings, but it would be helpful to also have them in the regulation itself.

Recommendation:
Delete section of the preamble granting states the authority to determine the setting.

Add to the list of settings: & school, workplace, foster home, group home, mobile crisis vehicle, community mental health center, substance abuse treatment setting, community setting and other settings.

Provisions of the Proposed Rule

Provisions of the Proposed Rule

Section 441.45(b)(8): Exclusion of services that are not provided to a specific individual.

NAMI applauds the discussion in the preamble recognizing that effective rehabilitation of eligible individuals may require some contact with non-eligible individuals. The preamble further explains that counseling sessions for the treatment of the child may include the parents or other non-eligible family members and concludes that contacts with family members for the purpose of treating the Medicaid eligible individual may be covered under Medicaid.

NAMI appreciates this recognition of the importance of family relationships in supporting recovery. Recent research studies have confirmed that family support leads to better outcomes from treatment. NAMI urges CMS to amend the rule to add language from the preamble to be clear on this point.

Recommendation:

Add: Contacts with and services to family members and other non-eligible individuals for the purpose of treating the Medicaid eligible individual may be covered as a rehabilitative service.

Submitter : **Mr. Frank Zingheim** **Date: 09/28/2007**

Organization : **NAMI Tennessee**

Category : **Consumer Group**

Issue Areas/Comments

Regulatory Impact Analysis

Regulatory Impact Analysis

Our family is a grateful receipment of the Assertive Community Treatment (ACT) program in Knoxville, TN.
This program saved our son's life.
Please do not kill, or modify the legislation to prevent others from obtaining this treatment gift!!

Submitter : **Ms. Bonnie Brown** **Date: 09/28/2007**

Organization : **Ms. Bonnie Brown**

Category : **Social Worker**

Issue Areas/Comments

GENERAL

GENERAL

I have been a mental health worker in one way or another for almost 40 years starting at age 16 volunteering in a state psychiatric hospital in New Jersey. I have worked in California, Illinois and the U.K., now in a mental health center in Indiana. The majority of my work (volunteer and paid) has been with the seriously mentally ill population. I am very concerned that the proposed MRO changes will further contribute to the disenfrancisement of this population. Already mental health services are not on parity with other illnesses in terms of funding/insurance reimbursement. Already the jails and prisons are the "new state hospitals" for the mentally ill. Already we hear about non-existent mental health services for this population in the areas still recovering from hurricane Katrina. Already there are concerns about returning veterans from Afganistan and Iraq with PTSD and insufficient mental health services. How many of them will end up on the "streets" homeless, needing MRO services? In Howard County, Indiana, where I work, a recent community needs assessment identified that 25% of our local population is "dissatisfied" with available mental health services. (This is everyone, not just the SMI who mainly depend on Medicaid for access to treatment. Medicare pays for virtually nothing in terms of psycosocial rehab.) In Tippecanoe County, Indiana, a study just completed by Indiana University/Purdue University concluded inadequate mental health services exist and that serious mental illness leads to poverty, incarceration, hospitalization. I am priveleged to work in a Clubhouse program billed to MRO "day treatment". We began in 2004 and are now seeing our consumers making real progress in getting their lives back, working in real jobs, volunteering or going back to school. This model of treatment is unique. An International Center for Clubhouse Development (ICCD) Certified Clubhouse provides a fidelity model that can be replicated, in fact is replicated, not just in America but internationally. I would urge you to consider evaluating this model as an evidenced-based practice meeting MRO guidelines. #1, so you know exactly what you are paying for. Not facilities billing for "Clubhouse" when "Clubhouse" is not clearly defined...but ICCD Certified Clubhouses where the fidelity to the model is externally evaluated by ICCD Staff. #2, Clubhouses are the epitome of person-centered recovery. We strive for REAL outcomes, REAL lives, people working, going back to school to become EQUAL CONTRIBUTING MEMBERS in our communities. As people recover, they utilize fewer MRO services and, hopefully, become tax paying citizens through their employment reducing their dependence on social security disability and welfare. YES YES YES we want to see CHANGE to achieve rehabilitation, we do not want to "maintain" people in dependent custodial care. As a taxpayer, I want my money spent appropriately. My concern is that without any additional or alternative funding at the state level, implementing the proposed changes will greatly limit the quality of services I can provide to the SMI population. I really believe that the Clubhouse is making a real difference. It's not about a consumer achieving a recovery goal...it's a person getting a life.

Ms. Bonnie Brown
2011 High Street
Logansport, IN 46947

CMS-2261-P-182

Submitter : **Date: 09/28/2007**

Organization :

Category : **Congressional**

Issue Areas/Comments

GENERAL

GENERAL

SEE ATTACHMENT

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERIVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

Please note: We did not receive the attachment that was cited in this comment. We are not able to receive attachments that have been prepared in excel or zip files. Also, the commenter must click the yellow "Attach File" button to forward the attachment.

Please direct your questions or comments to 1 800 743-3951.

Submitter : Miss. MaryAnn Miller **Date:** 09/28/2007

Organization : Miss. MaryAnn Miller

Category : Individual

Issue Areas/Comments

Background

Background

Please continue to work to provide all necessary funding to help any program that would benefit the citizens with brain disorders. As a mother of a 17 year old with multiple brain disorders we are already out-there by ourselves. Don't take away any programs that give us a little help now.

Submitter : **Mr. Emil Colangelo** **Date: 09/28/2007**

Organization : **DisabilityPanthers**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

I am a psychiatric consumer. Please do not take away Medicare provisions.

Submitter : TONY LEGGITT **Date:** 09/28/2007

Organization : TONY LEGGITT

Category : Individual

Issue Areas/Comments

Background

Background

Clarify the provisions in the regulation to allow payment for outreach and emergency services.Revise the proposed rule to allow payment for rehabilitative services to prevent deterioration as well as to restore functioning.Delete all references to other systems and pay for rehabilitative services for individuals with serious mental illnesses when they need them and where they need them.Amend the proposed rule to allow therapeutic foster care and let states combine the services in one rate if that works best for them. The federal government can meet its goals by making sure that the rate only includes rehabilitative services.

Amend the regulation to say that the exclusion does not include behavior aides or other related service providers who are providing services to a particular child The proposed rules should not exclude people with mental retardation and related conditions and habilitation services.

GENERAL

GENERAL

Rehabilitation services can change the course of a person s life. Our experiences tell us what a difference they can make. The research data confirms what we already know services are very effective at reducing symptoms, keeping people out of hospitals, and allowing people to live better lives in the community.

We know what works. But we also know that too many people can t access these treatments. And the terrible consequences are seen in every jail and prison in America.
The federal government should be doing everything possible to encourage states to provide better and more effective services for people living with mental illnesses.
We do not want to see billions of dollars taken out of the Medicaid funded system of care for people with mental illnesses. We do not want to see adults and children ignored and left behind in school, work, and life.

We ask that you revise these regulations to make it clear that the federal government encourages any state system to do all they can to provide effective treatments to people with serious mental illnesses

Submitter : **Mr. Robert Kavee** **Date: 09/28/2007**

Organization : **Mr. Robert Kavee**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2261-P-186-Attach-1.DOC

#186

Dear Sir or Madam:

Thank you for providing opportunities for individuals living with mental illness and their family members to provide comments on the proposed rule regarding coverage for rehabilitative services under the Medicaid program. I am writing as a member of The National Alliance on Mental Illness (NAMI), the nation's largest grassroots organization representing individuals living with serious mental illnesses and their families. As members of NAMI, we have lived experience with mental illness and bring that unique perspective to our comments on these rules.

We know from personal experience that access to rehabilitative services can make all the difference in a person's life. We have seen people get services to help them recover from their illness. With services and support, individuals with serious mental illness can and do live very well in the community and have strong relationships with family and friends. We have also seen those who can't get help and have seen the pain and trauma from untreated mental illness for the individual and his or her family. Often the person will have multiple stays in hospitals and jails.

NAMI conducted a survey of the 50 state mental health agencies for our *Grading the States* report and found what individuals with mental illness and their family members already know – in all the states, there are gaps in services and many people with serious mental illnesses are not getting the help that they need. The average state grade was a D. So we know that there is much work to be done to ensure that people can get the treatment they need when they need it. NAMI members know that treatment works, if you can get it.

As a result, we are very troubled by the estimate in the proposed regulation that these rules would save the federal government 2.2 billion dollars. Our experiences tell us that creating barriers to vital services will not save money in the long run. Rather, it will increase the costs from hospitalization, incarceration and other bad outcomes that result from a failure to get needed treatment.

We appreciate the emphasis on recovery in the rules. All individuals with mental illness and their families want the system to make it easier to recover. We also like the provisions about the participation of the individual and their family in the rehabilitative plan and receiving copies of the plan so we can hold the system accountable. We would like to see some flexibility to make sure that providers can still do outreach and provide crisis care, but we very much appreciate the agency's intent to encourage communication between providers, the individual and family members.

However, we have a few areas of deep concern where we hope the agency will reconsider its rules. We would like to see services provided to help prevent deterioration of an individual. We also would like to see other systems encouraged, not discouraged, from providing help to adults and children with serious mental illnesses.

Section 440.130(d)(1)(v) and 440.130(d)(3) Rehabilitation Plan:

The proposed regulations require that a written rehabilitation plan set out the services that will be provided. The plan is to be written with the involvement of the individual and the family. We

very much applaud the agency for including the person and the family in the planning and for encouraging person-centered planning.

We would like to see some flexibility in the rules to allow providers to conduct outreach to individuals who may not be ready to be part of a formal treatment planning process. Sometimes, it takes repeated visits before a person is ready and understands how treatment will be a benefit to him or her.

In addition, there are times when a person is in crisis and needs help. At that point, they might not be able to be part of a planning process. If they are new to a community or have recently been in the hospital or jail, they also may not have a treatment plan on record. The rules should allow treatment in these narrow circumstances.

Recommendation:

Clarify the provisions in the regulation to allow payment for outreach and emergency services.

Section 440.130(d)(1) Rehabilitation And Restorative Services:

Under the proposed regulations and the preamble, rehabilitative goals have to be targeted at progress. They can't be used to maintain stability unless that is linked to another goal where they are still working on improvement. But mental illness does not work in a straight line upward. For many of us and our loved ones, the path to recovery is not straight up or down. It is often a process with periods of progress and periods where symptoms may have to be closely managed to prevent deterioration. The changing course of serious mental illness must be factored into the proposed regulations governing rehabilitative services.

For some of us and our family members who have been hospitalized or in jail, staying stable and in housing is not easy and is an achievement. It also requires services so we do not deteriorate and get worse. We hope the agency will adjust its regulations to take into account the nature of our illnesses and those of our family members and allow services to prevent deterioration of the illnesses.

Recommendation:

Revise the proposed rule to allow payment for rehabilitative services to prevent deterioration as well as to restore functioning.

Section 441.45(b) Exclusion Of Services, Including Those That Are An "Intrinsic Element" Of Other Programs:

Many adults and children with mental illness and their families are also part of other service systems – including criminal justice, juvenile justice, education, housing, and child welfare. In my community, people with mental illness are overrepresented in these systems and we face major challenges to make sure that people with mental illness do not fall through the cracks.

The proposed regulations could make that challenge much more difficult. We are just starting to see some of these other systems provide the help that people with mental illness need. If these regulations are a barrier to getting federal dollars for some of the costs, then other systems will either stop providing the care or they will stop serving people with mental illness. Either way, people with mental illness and their family members are the ones who will get hurt.

We have reviewed this proposed regulation and the preamble and we do not know how to determine whether something is "intrinsic" to another system. We urge the agency to use terms and factors that are easily understandable by those who use these services and their families as well as state policymakers.

Finally, Medicaid is a program that people rely upon to pay for their care. If Medicaid is required to pay for healthcare services, then it should not matter whether the service is "intrinsic" to another system. It is important that Medicaid remain a reliable source of payment for people.

Recommendation:

Delete all references to other systems and pay for rehabilitative services for individuals with serious mental illnesses when they need them and where they need them.

Section 441.45(b) Exclusions For Therapeutic Foster Care And Classroom Aides:

Many children with mental illnesses rely upon therapeutic foster care. This is a service that works well and creates good outcomes such as going to school more, staying out of trouble with law enforcement, and living in a stable place. The proposed regulations should give states the ability to get federal resources to support this effective service as long as the services are rehabilitative.

The proposed regulations say that the federal government will not provide resources for recess aides or classroom aides. We believe that the rule also needs to clearly inform schools that Medicaid will pay for behavior aides and other mental health providers who are giving services to a particular child. Children with mental illnesses and their families have been fighting a long battle to get mental heath services provided to children in schools and this regulation should support that effort by clearly encouraging school-based mental health services.

Recommendation:

Amend the proposed rule to allow therapeutic foster care and let states combine the services in one rate if that works best for them. The federal government can meet its goals by making sure that the rate only includes rehabilitative services.

Amend the regulation to say that the exclusion does not include behavior aides or other related service providers who are providing services to a particular child.

Section 441.45(b)(2) Exclusion For Mental Retardation And Other Conditions And Habilitation Services:

The proposed regulations prohibit people with mental retardation or related conditions, like cerebral palsy, to get rehabilitation services. As advocates for one group – people with mental illness – we do not support the exclusion of any other group on the basis of their disability.

We also understand that Congress asked the federal agency to determine which habilitation services to cover. It did not give the agency the option to ban all habilitation services.

Recommendation:

The proposed rules should not exclude people with mental retardation and related conditions and habilitation services.

Conclusion:

Rehabilitation services can change the course of a person's life. Our experiences tell us what a difference they can make. The research data confirms what we already know – services are very effective at reducing symptoms, keeping people out of hospitals, and allowing people to live better lives in the community.

We know what works. But we also know that too many people can't access these treatments. And the terrible consequences are seen in every jail and prison in America. The federal government should be doing everything possible to encourage states to provide better and more effective services for people living with mental illnesses.

We do not want to see billions of dollars taken out of the Medicaid funded system of care for people with mental illnesses. We do not want to see adults and children ignored and left behind in school, work, and life.

We ask that you revise these regulations to make it clear that the federal government encourages any state system to do all they can to provide effective treatments to people with serious mental illnesses.

Thank you,

Robert Kavee

CMS-2261-P-187

Submitter : Ms. Lillian Polak **Date:** 09/28/2007

Organization : NAMI

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

The bottom line is that it is far less expensive to provide treatments that enable individuals to get back on their feet and back into society as productive citizens than it is to incarcerate them in jails or hospitals, and since medicaid is generally the providor of last resort for these people it behooves our elected representatives to assure that we make it available for these purposes. Ultimately, we will be judged by how we have treated the most vulnerable among us.

Submitter : **Miss. Theresa Reed** **Date: 09/29/2007**

Organization : **I'm an individual who uses mental health services**

Category : **Other**

Issue Areas/Comments

GENERAL

GENERAL

I think that the senators wishing to vote to restrict the funding to other parameters should send thier staff to attend the briefing on Wednesday, Oct 3, at 10:30 in 188 Russell Senate Office Building, before doing so. I would encourage the senators to be lenient since Medicaid pays most of my group and therapy which teaches me ways to be more healthy and expressive, rather than just providing medications with a 20 minute maximum check-in once every two to three months.

I have been diagnosed with schizoaffective disorder, and I rely on such therapy to know when to do reality checks, prevent me from using cognitive distortions to sink into paranoia, and to keep me functioning in general outside a hospital. I only offer a little of my story because it matters so much to me that I stay sane and my Medicaid payments to a mental health agency for therapy in group and individual is so much a part of that.

I urge you not to take this vote lightly, and to not make it merely a matter of questionablc social spending.

Thank you very much for your time.
Theresa

Submitter : **Ms. Nora Gainey** **Date: 09/29/2007**

Organization : **CAN-TD**

Category : **Individual**

Issue Areas/Comments

Background

Background

The Centers for Medicare and Medicaid Services have issued proposed rules on the Medicaid Rehabilitation Services option. The Rehabilitation Services option is the most important funding source of services for people with mental illness such as assertive community treatment (ACT), multi-systemic therapy for children and adolescents (MST), and other important evidence-based services. NAMI is concerned that the proposed rules may have a negative impact on the ability of states to pay for these services.

I am too. I am a citizen of the US living aboard and I am concerned for the mental health of all Americans as weel as the rest of the globe, I Know that the minimal help available will become even more minimal if this passes