

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, Maryland 21244-1850



**Center for Medicaid and CHIP Services**

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May 23, 2012

Mr. Nicolas Toumpas  
Commissioner  
Department of Health and Human Services  
State of New Hampshire  
129 Pleasant Street  
Concord, NH 03301

**Re: State Access to Care Issues for Physician and Home Health Services**

Dear Mr. Toumpas:

We appreciate the ability to meet with you and others from the State in person on March 22<sup>nd</sup> to discuss access to medical services in New Hampshire as well as the teleconferences that have occurred since. As you know, over the last year, CMS has been made aware of growing concerns from the hospital community in New Hampshire that access to care within the Medicaid program is threatened due to a series of rate and payment reductions. Though we have had ongoing meetings and you committed to providing comprehensive data to us for review, we have not yet received the data and analysis we discussed.

As you know, the Centers for Medicare & Medicaid Services (CMS) shares a responsibility with New Hampshire to assure that the Medicaid program provides its beneficiaries access to care and that New Hampshire is operating its program in compliance with its approved State plan and section 1902(a)(30)(A) of the Social Security Act (the Act). Over the past several months CMS has received and shared with you information that strongly suggests New Hampshire's Medicaid program may have access issues for physician services and home health services as authorized by section 1905(a)(5) and 1905(a)(7), respectively.

The information available to CMS includes testimony provided to the Federal District Court in New Hampshire in the case of *Dartmouth-Hitchcock v Toumpas*. The depositions raise issues about current and future access to physician services, inpatient and outpatient psychological services and hospital –related home health services. In particular, there were several hospital-based physician practices that indicated that they will need to close their panels to new and, in some cases, current Medicaid beneficiaries. Lakes Regional General Healthcare (LRGH) has already notified 3,000 Medicaid beneficiaries that they would need to find an alternative source of primary care as the professional group associated with LRGH would no longer be available as

a Medicaid participating provider. Additionally, we have received information that we have shared with you that sub-acute facilities are taking action to severely reduce the number of available beds to ventilator-dependent beneficiaries under the home health benefit. All services defined under 42 CFR 440.210(a), which includes physician and home health services, must be provided under the Medicaid State plan and all services under the State plan are subject to the requirements of section 1902(a)(30)(A) of the Act.

We have discussed these issues with the State throughout a series of meetings starting in January 2012, including our in-person meeting on March 22, 2012 and our phone call earlier this month. During these discussions, you and your staff have described some steps the State has taken to ascertain if there is an access problem. Given the questions that have arisen and the actions some providers have already taken to limit their participation in the program, CMS has informed the State that access to care must be demonstrated in a comprehensive and data-driven way and that rates and payments must be clearly identified within the State plan. The State has provided some information but that information is generally dependent on older data or reports that were not developed to address the specific issues raised since 2010 or to establish a baseline by which to evaluate access over time. CMS provided New Hampshire with examples of ways other States have developed baseline service numbers, trending analysis, service categories, and data elements to evaluate access in their States. To date, New Hampshire has not provided such information or data-driven analysis.

As you know, we have under review, several State plan amendments that affect hospital rates. Given the continued and significant concerns expressed by hospital systems over the State's rates, CMS requests that the State provide specific data and analysis that establish historical and current access levels for physician services, inpatient and outpatient services and rate structures including the impact of DSH payments, sub-acute care services and home health services using:

- (1) Current data, surveys or other applicable analysis developing historical levels of access to care such as those including information on the: participating provider network size and capacity, service utilization trends, rate levels (baseline access information);
- (2) Trend analysis on data elements described in the baseline to understand the impact of program and rate changes in the State;
- (3) Evidence of ongoing beneficiary engagement efforts;
- (4) Provider access monitoring plans and procedures including how the State will work with stakeholders including providers and beneficiaries in developing access standards, take corrective action should an access problem be identified.

We request that you provide this information within the next 30 days. While this is a short time frame, CMS and the State have been talking about these issues for four months, and we requested data when we met in March. If it would be helpful, we can re-send the information we provided about how other States have developed salient analyses related to access. If the State is unable to provide a demonstration of access in this time period, CMS will meet with you to discuss next steps which could ultimately result in a compliance action as described at 42 CFR 430.35.

We know that the State has faced budget pressures and that you are committed to assuring that New Hampshire's Medicaid beneficiaries have access to care. We believe that the information we are requesting will be useful to you as well as to CMS as we move forward. We look forward to a quick and collaborative resolution to the access concerns. I want to also offer to set up a meeting with the State and the hospitals to discuss these matters together; let me know if you think such a meeting would be productive. If you have any questions or want to discuss this further, please contact me or Richard McGreal, Associate Regional Administrator.

Sincerely,

Cindy Mann  
Director and Deputy Administrator