



State of New Hampshire

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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NICHOLAS A. TOUMPAS
COMMISSIONER

June 1, 2012 (Revised June 4, 2012)

Cindy Mann
Director and Deputy Administrator
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
Department of Health & Human Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

Re: New Hampshire's First Reply to CMS Letter of May 23, 2012

Dear Ms. Mann:

I am in receipt of the above-referenced letter from you. The New Hampshire Department of Health and Human Services (the Department) intends to submit its formal response to your letter by the deadline imposed, June 22, 2012. I feel compelled, however, to set the record straight relative to access in New Hampshire and to the good faith, committed and extraordinary efforts put forth by the Department staff, as well as many other State of New Hampshire officials to respond to the series of requests and demands by your agency. I want to be clear that we do not have any information now indicating that we have an access problem. The CMS requests arise with respect to two major efforts: the resolution of pending NH Title XIX state plan amendments through Calendar Year 2010; and the many actions undertaken to ensure access to all needed care for NH Medicaid recipients, in the face of some hospitals' threatened or actual decisions to discontinue care for Medicaid recipients.

Your letter restates CMS' concern about access to care in the NH Medicaid program based on information it has received and cites three sources of information: (1) testimony given by several hospital administrators in a *pending* lawsuit, *Dartmouth-Hitchcock v. Toumpas*, (2) the assertion by Lakes Region General Hospital (LRGH) that it would no longer serve some NH Medicaid patients at certain of its professional group practices, and (3) certain sub-acute facilities, which have announced a reduction in the number of beds available for ventilator-dependent patients, regardless of insurance or payer source.

To the dismay of this Administration, your letter characterizes the conduct of this Department in an inaccurate manner and acknowledges neither the prompt, responsive actions taken by the Department nor most of the documents submitted to you over the past three months. You also make the unwarranted assertion that CMS has "not yet received the data and analysis" it requested in response to the cited sources of information concerning access. To the contrary, New Hampshire has sent definitive, detailed information, factual corrections, data, and analysis of the providers' assertions, all of which is highly responsive to each source of "concerning" information CMS cited. While the Department has not yet completed all of its planned submissions to CMS, your office has received substantial "data and analysis" that is responsive to the requests made.

Much of this material was submitted to you on March 16, 2012, in a document entitled, "New Hampshire Medicaid Access to Care Information Report," which consists of three sections. The entire

first section of this Report (pages 7-20) is devoted to responding in detail to the statements and assertions of each of the hospitals in the lawsuit. For example, LRGH sent letters announcing the closure of some of its primary care practices to 3,500 non-maternity, Medicaid-only covered adults, but also stated that it was not closing two of its family practices in the same area to any existing or new Medicaid patients. The Access Report (at pages 7-9) informs CMS of the results of the Department's detailed investigation into the LRGH action:

- The number of patients affected is greatly overstated; LRGH sent letters to 3,500 patients, but only 1,000 of them were enrolled as NH Medicaid recipients at the time. Of those 1,000 Medicaid patients, about 600 had received care from other providers in the prior 6 months, leaving about 400 recipients potentially in need of a new primary care site.
- Four (4) primary and family care sites in close proximity to LRGH continue to offer services to all current and new Medicaid patients, two of which are owned by LRGH;
- One of the other primary care practices in the area confirmed its ability to accept 800 new patients, and a second site confirmed its ability to accept at least another 250 patients over the next few months.
- In the weeks following submission of the Access Report, the Department has confirmed, by reviewing claims data and communicating directly with Medicaid recipients, that each of the remaining 400 affected Medicaid patients has relocated to an appropriate primary care site.

Similar specific information regarding six other hospitals' actions is presented in the Access Report (pages 9-20). The same Report (Section II, pages 20-35) describes in detail the Department's current, effective practices relative to assisting recipients, intervening to connect providers and patients, measuring provider enrollment and disenrollment trends, and investigating any reports of provider decisions to stop accepting Medicaid patients. This information clearly demonstrates that there has not been, currently is not, nor will be any evidence of a barrier to access to Medicaid recipients in New Hampshire.

With respect to New Hampshire's future plans and efforts, we recognize that the work is ongoing and that more data and analyses will need to be submitted. Your office should have acknowledged, however, that the Department already submitted a detailed description of our activities and plans for expanding and improving our access measurement tools *and* shared a comprehensive set of reports. As clearly explained in these submissions and in the conference calls from early March to early May, NH proposes to use these reports to: (a) establish the current state of provider capacity and service utilization for all the services about which CMS has expressed concerns, as well as others, (b) measure trends in provider capacity and service utilization in recent years, and (c) take affirmative prompt and effective action regarding recipient communications or data trends that indicate an access problem for any Medicaid recipient. On April 20, 2012, only a few short weeks after submission of the Access Report, DHHS also submitted a document outlining the data-driven and comprehensive set of measures it proposes to use to monitor access against a baseline or benchmark measure.

To date, CMS has been unwilling to review either of these two documents with Department staff in order to provide constructive technical assistance. In recent conference calls with the Department, your


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senior staff expressed disdain for the content of all of these submissions and questioned whether CMS should even take the time to review the information. That is an unacceptable position in a jointly administered program like Medicaid, where constructive engagement between the Federal and State government partners is essential to the health of the program and its beneficiaries.

The written list of “specific data and analysis”, now requested via CMS’ letter of May 23, 2012, is a different set of requests than those posed in the March 22, 2012 meeting and in subsequent conference calls. CMS implies unfairly that the Department has been non-responsive to CMS access questions for a period of four months. Four months ago, the agenda was focused on clearing a backlog of state plan amendments pending from 2006 through 2010, concerning a wide range of issues, the majority of which did *not* concern access. Only at the end of February have the CMS–NH discussions turned to access concerns; those concerns have been centered on a time period *after* 2010. The Department has responded professionally, timely and comprehensively to all requests since we began the joint work sessions in January 2012 and these efforts reflect the dedicated engagement of New Hampshire officials and the staff.

New Hampshire will ensure continued access to care for its Medicaid recipients while moving forward with its plans to restructure the NH Medicaid system under a managed care model. To that end, we are continuing work on our proposed access measurement and monitoring plan and preparing to submit a formal response to the requests set forth in your May 23, 2012 letter. We expect that once New Hampshire has submitted the requested information, CMS will re-engage with the State to resolve any remaining outstanding SPA issues in a constructive and expeditious manner. I look forward to further communications with you and am available at any time to discuss these matters.

Sincerely,



Nicholas A. Toumpas
Commissioner