

**CMS REGULATORY ACTIONS**

<b>CMS RULES WITH NO MORATORIUM</b>	<b>LEGISLATIVE STATUS</b>	<b>SCORE TO OFFSET</b>
<p><b>Health Care Provider Tax</b> – The regulation imposes more stringent language in applying the hold harmless test and affords CMS broad flexibility in identifying relationships between provider taxes and Medicaid payments. Proposed rule issued March 23, 2007. 72 Federal Regulation, 13726 to 13734 with the exception of the proposed amendments to be codified at 42 C.F.R. 433.56(a)(8) and 42 C.F.R. 433.68(f)(3)(i).</p>	<p>Immediate Congressional action is needed to stop the provider tax regulation for 1-year.</p>	<p>CMS estimates that Medicaid outlays would be reduced by \$85 million in FY 08 and \$115 million per year from 2009 – 2011. The impact relates to the change in the indirect guarantee safe harbor from 6% to 5.5% and from the change related to managed care taxes. <u>Thus, the remaining portion of the rule in question should cost significantly less to offset.</u></p>
<p><b>Outpatient Hospital and Clinic</b> – CMS seeks to limit the funding that states pay for outpatient visits to hospitals and clinics by restricting costs, including GME, that can be counted in the upper payment limit, which is the maximum a state can pay for these services. Proposed rule published September 28, 2007. 72 Federal Regulation 55158 to 55166 (to be codified at 42 C.F.R. 440, 447).</p>	<p>Legislation needed to stop the outpatient rule for 1-year. See H.R. 3533, Engel (D-NY), Myrick (R-NC) and S. 2460, Bingaman (D-NM), Dole (R-NC)</p>	<p>CMS states that, due to lack of data, it cannot estimate the impact, but does "not believe the proposed rule would have significant economic effects." This rule overlaps significantly with the Govt Provider and GME rules below thus any score would be reduced by the overlap. As to magnitude of this rule taken separately, one public hospital estimates they will have \$120 m. at risk annually.</p>
<p><b>Targeted Case Management</b> – The regulation clarifies the definition of covered case management services – referred to as Optional State Plan Case Management Services or more commonly Targeted Case Management (TCM). Interim final regulation issued December 4, 2007. 72 Fed Reg 68077-68093.</p>	<p>Interim final rule becomes effective March 3, 2008. Legislation needed to stop the TCM rule for 1-year. See H.R. 5173, Ellison (D-MN) and S.2578, Coleman (R-MN).</p>	<p>CMS estimates federal savings of \$1.28 billion FY 2008-FY 2012. [Note: Implementation is estimated to result in \$369 million in higher foster care costs ]</p>
<p><b>Departmental Appeals Board (DAB) Procedures</b> –The rule allows the HHS Secretary to overturn or remand Board decisions on Medicaid, TANF and Head Start; exclusions from federal health care programs; civil penalties on Medicare Advantage or Prescription Drug Plans under Medicare Parts C or D, decisions on whether providers meet conditions of participation in Medicare or Medicaid. Proposed rule published Dec. 28, 2007. 72 Fed Reg 73708 – 73720.</p>	<p>Legislation is needed to stop this DAB rule for 1-year.</p>	<p>No estimate of federal savings is available.</p>
<p align="center"><b>RULES UNDER MORATORIUM</b></p>		
<p><b>Government Provider Cost Limit</b> – Imposes new restrictions on payments to providers operated by units of governments. Final rule issued May 25 and published May 29, 2007.  72 Fed. Reg. 29748 to 29836 (to be codified at 42 C.F.R. pts. 433, 447, 457).</p>	<p>Congress delayed effective date until May 25, 2008. Further Congressional action is needed to extend the moratorium by 1-year. See H.R. 3533, Engel (D-NY), Myrick (R-NC) and S. 2460, Bingaman (D-NM), Dole (R-NC)</p>	<p>CBO Score for this regulation and GME regulation below is \$770 million if moratoria for both were extended to March 1, 2009 Reduction in Medicaid outlays estimated at \$40 m. in FY 2008, \$790 m. in FY 2009, \$1.17 b. in FY 2010, \$1.21 b. in FY 2011, \$1.25 b. in FY 2012, and \$1.29 b. in FY 2013. (\$5.75 b 2008-13)</p>
<p><b>Graduate Medical Education (GME)</b> – The proposal would no longer allow Medicaid funding to be used for GME. Proposed rule published May 23, 2007  72 Fed. Reg. 28930 to 28936 (to be codified at 42 C.F.R. pts. 438, 447).</p>	<p>Congress acted to delay the effective date until May 25, 2008. Further Congressional action is needed to extend the moratorium by 1-year. See H.R. 3533 and S. 2460 above.</p>	<p>See CBO score in regulation entry above. This rule is estimated to reduce Federal Medicaid outlays by \$150 million in FY 2009, by \$290 m. in FY 2010, by \$450 m. in FY 2011, by \$460 m. in FY 2012 and \$470 m. in FY 2013. (\$1.82 billion 2009-2013)</p>
<p><b>Rehabilitation</b> – The rule seeks to create a firm distinction between rehabilitation services and habilitation services, the latter of which would not be reimbursable under the Medicaid rehabilitative benefit. Proposed rule issued August 13, 2007 72 Federal Regulation 45201.</p>	<p>Congress acted to delay the effective date until June 30, 2008. Further Congressional action is needed to extend the moratorium by 1-year.</p>	<p>Rule estimated to reduce Federal Medicaid spending on rehab services by approx. \$110 m.in FY 2008, by \$360 m. in FY 2009; \$250 m. in FY 2010; \$570 m. in FY 2011; \$610 m. in FY 2012, and \$660 m. in FY 2013. (\$2.56 billion 2008 – 2013)</p>
<p><b>School-Based Health</b> – Under the rule CMS would eliminate a longstanding policy of providing federal matching payments for administrative activities and transportation. Final rule issued December 28, 2007.  72 Fed. Reg. 73635 - 73651 and to be codified at 42 C.F.R. pts. 431, 433, 440.</p>	<p>Congress delayed effective date until June 30, 2008. Further action needed to extend the moratorium by 1-year. H.R. 4355, Boozman (R-AR), Ross (D-AR), Kuhl (R-NY).</p>	<p>This rule is estimated to reduce Federal Medicaid outlays by \$64 million in FY 2008; \$635 million in FY 2009, \$675 million in FY 2010; \$720 million in FY 2011; \$770 million in FY 2012; and \$820 million in FY 2013. (\$3.684 billion 2008- 2013)</p>

<b>RULES FORECAST IN PRESIDENT'S FY 09 BUDGET</b>		
<p><b><u>Managed Care Reform</u></b> - An as yet unpublished regulation contained in the President's FY 09 Budget. The description of this anticipated regulation refers to 1915(b)(3) state waivers and anticipates that this rule will specify which services are allowable for managed care savings under 1915(b)(3).</p>		<p>The Managed Care Reform rule is estimated to reduce Federal Medicaid outlays by \$100 million in FY 2009; \$100 million in FY 2010; \$200 million in FY 2011; \$200 million in FY 2012; and \$200 million in FY 2013. (\$800 million in 2009-2013)</p>
<p><b><u>Free Care Reform</u></b> – The President's FY 09 Budget refers to an anticipated regulation to eliminate Medicaid payments for such care.</p>		<p>No savings estimates are available for this proposal.</p>
<p><b><u>Clarify Inflation Protection in Partnership LTC Programs</u></b> – The President's FY 09 budget states that a rule will be published to establish that long-term care insurance policies that include a future purchase option inflation protection do not qualify as Partnership policies.</p>		<p>No savings estimates are available for this proposal.</p>