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De-Targeting the Stimulus: States Diverting Medicaid Funds Away from Helping Poor, Protecting Healthcare Jobs

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**De-Targeting the Stimulus: States Diverting Medicaid Funds
Away from Helping Poor, Protecting Health Care Jobs**

**Staff Report
U.S. House of Representatives
111th Congress
Committee on Oversight and Government Reform
Darrell Issa, Ranking Member
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Introduction

The American Recovery and Reinvestment Act of 2009 (ARRA) provided \$87 billion to states to support their Medicaid programs. However, early reports indicate that instead of using the stimulus funds to supplement state Medicaid spending to protect medical services and healthcare service jobs, some states are effectively diverting Medicaid stimulus funds for non-healthcare related purposes. This practice undermines the promise that stimulus funds would be “targeted.” By exploiting a loophole in the stimulus legislation, states are effectively able to use federal funds intended for healthcare spending for whatever projects they choose and without obligation to adhere to federal transparency and accountability rules attached to stimulus funds.

While ARRA arguably will mitigate the financial burden of Medicaid on states, it does so by simply cost-shifting to the federal government. Contrary to statements from prominent ARRA supporters, the stimulus bill will not ensure that Medicaid programs are maintained at their pre-recession levels. The enhanced FMAP monies will not protect against decreases in Medicaid reimbursement to health care providers nor does it ensure that previous cuts will be restored. One of the justifications for including healthcare services in the stimulus legislation was the purported multiplier effect on the economy. But if states fail to increase the net Medicaid expenditures, that effect is significantly diminished.

Finally, while more families may be accessing Medicaid insurance during these difficult economic times, this does not mean they will have access to close, reliable, and quality health care services. Simply put, a Medicaid insurance card is only as good as the care it allows a beneficiary to access. If Medicaid reimbursement rates are below the cost of providing the care, doctors, hospitals, and other health care providers will opt out of the program.

Summary of Medicaid Provisions in the American Recovery and Reinvestment Act

Medicaid provides health insurance to low-income children, pregnant women, parents of dependent children, the elderly, and people with disabilities and is funded jointly by the federal government and states. The FMAP, or the portion of funding provided by the federal government, is calculated annually and varies from state to state based upon a formula that is designed to produce larger federal payments in states with lower per capita incomes.¹

The American Recovery and Reinvestment Act of 2009 (ARRA) included \$89.4 billion in increased federal Medicaid expenditures, of which a temporary increase in FMAP

¹ April Grady, Medicaid: The Federal Medical Assistance Percentage (FMAP), March 10, 2009, at 1.

accounted for \$87.2 billion.² The architects of the Medicaid provisions in the Act clearly indicated that the funds would be directed to shore up existing state efforts in order to provide a net increase in Medicaid funding.

"This plan will also help ensure that you don't need to make cuts to essential services Americans rely on now more than ever."³—President Barack Obama

"To help states avoid these types of cuts in Medicaid enrollment and coverage, [sic] provides states an estimated \$87 billion in additional federal matching funds for Medicaid over a two-year period.... In addition to shoring up existing Medicaid enrollment and coverage, this \$87 billion in increased federal assistance for Medicaid is an excellent economic stimulus."⁴—Speaker Nancy Pelosi

"The package will also provide additional federal matching funds to help states *maintain* their Medicaid programs in the face of recession-drive revenue declines and caseload increases."⁵—Chairman Henry Waxman

"The substitute before us today would provide much needed relief to every state through a temporary increase in the Federal share of Medicaid funding. This funding would prevent states from making further cuts to a program that is already in dire circumstances due to the economic downturn."⁶—Chairman Max Baucus

Section 5001 of ARRA provided an increase in FMAP for 27 months between October 1, 2008 and December 31, 2010, known as the recession adjustment period.⁷ For this period, ARRA provides an across the board 6.2 percent increase in FMAP and an additional increase is available to states based upon their unemployment rates compared to historical unemployment rates.

The Act included several requirements in order for states to be eligible for the increased FMAP. First, states are required to show maintenance of effort (MOE) as it relates to eligibility requirements. Specifically, the Centers for Medicare and Medicaid Services (CMS) interprets this provision prohibiting state Medicaid plans from instituting more restrictive eligibility standards, methodologies, or procedures than were in place

² Cliff Binder, Evelyne P. Baumrucker, April Grady, and Elicia J. Herz, American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5): Title V, Medicaid Provisions, Congressional Research Service, March 17, 2009, at 3.

³ Press Release, White House Office of the Press Secretary, President Obama Announces \$15 Billion in Medicaid Relief from ARRA Headed To States (February 23, 2009) (available online at: http://www.whitehouse.gov/the_press_office/President-Obama-Announces-15-Billion-in-Medicaid-Relief-from-ARRA-Headed-To-States/).

⁴ Speaker Nancy Pelosi, American Recovery and Reinvestment Act (2009), <http://www.speaker.gov/newsroom/legislation?id=0273>

⁵ Press Release, Chairman Henry A. Waxman, Energy and Commerce Passes Economic Recovery Legislation (January 22, 2009).

⁶ Senator Max Baucus, Floor Statement Regarding American Recovery and Reinvestment Act (February 9, 2009) (available online at <http://finance.senate.gov/press/Bpress/2009press/prb020909a.pdf>).

⁷ *Id.*

July 1, 2008 if such states wish to access the increased FMAP.⁸ If a state is ineligible as result of changes made to program eligibility, the state can become eligible by reinstating previous eligibility requirements. It is of note that this maintenance of effort requirement does not extend to state funding of the Medicaid program or reimbursement rates for Medicaid providers.

ARRA included a provision making states ineligible for the increased FMAP funds if, “such increase are deposited or credited into any reserve or rainy day fund of the State.”⁹ According to CMS, this prohibition applies to any direct or indirect deposit of FMAP into a reserve or rainy day fund and any state in violation of this provision is subject to audit and disallowance.¹⁰ However, should a state reduce its financial commitment to Medicaid and divert those funds to fill other budgetary gaps it does not appear that CMS intends to judge that change as violating the rainy day and reserve fund prohibition.

State Diversion of Medicaid Funds

As previously stated, CMS has signaled it will not consider the diversion of state dollars that would have otherwise been spent on Medicaid to other funds as a prohibited use of funds. Such a reduction in state financing of Medicaid mitigates and possibly nullifies the impact of ARRA FMAP provisions on Medicaid programs and by extension the vulnerable populations that rely on it for health insurance. In some states, the net Medicaid funding may remain relatively stable despite the \$87 billion investment by the federal government because states are renegeing on their commitment to Medicaid. In those instances, this provision simply serves as a way to cost-shift from the state to the federal government without necessarily shoring up the Medicaid program during the recession.

States are deliberating how to utilize the Medicaid stimulus funds. While these debates are ongoing, and therefore the outcome is unknown, there is evidence that states are considering the enhanced FMAP money as a replacement to state Medicaid funding. Below are some examples of the states that are considering diverting some part of the state Medicaid funding to other areas of the budget.

New York

New York State has already received the largest allocation of any state in FMAP funding from ARRA, totaling \$2 billion. Rather than use these funds to increase net Medicaid expenditures, Governor Patterson’s proposed taxes on sugared soda and music downloads, which were intended to raise revenue, were eliminated. According to the New York Times, “By swapping the proposed tax hikes for \$1.3 billion in stimulus

⁸ CMS Fact Sheet, American Recovery and Reinvestment Act of 2009 Section 5001: Increased Federal Medical Assistance Percentage, (March 25, 2009).

⁹ American Recovery and Reinvestment Act of 2009 Pub. L. No. 111-5, § 5001(f)(3) (2009).

¹⁰ CMS Fact Sheet, American Recovery and Reinvestment Act of 2009 Section 5001: Increased Federal Medical Assistance Percentage, (March 25, 2009).

money—funds that are technically allocated to states’ Medicaid budgets but can also be diverted to other programs—the deal leaves unchanged the projected \$14 billion deficit the state faces during the next fiscal year.”¹¹

The state is expected to receive a total of \$12.6 billion in federal Medicaid stimulus funds;¹² however, the total Medicaid expenditures will increase by only \$3.3 billion this year. Most of the increase is being driven by higher than normal enrollment in the program. Despite the increase in Medicaid expenditures, reimbursement will be reduced by \$306 million for hospitals, \$225 million for nursing homes, and \$68 million for home care.¹³

The proposed diversion of Medicaid stimulus funds from the program is having a negative impact on job growth. New York City Health and Hospitals Corporation, the city’s public hospital system, has announced it will be cutting 400 jobs and closing some children’s mental health programs.¹⁴ Alvin Aviles, President of the Health and Hospitals Corporation, stated that these job reductions were in part the result of proposed decreases in Medicaid reimbursement.¹⁵ Mr. Aviles has called on Governor Patterson to change course and dedicate federal Medicaid stimulus funds to reimbursement and health care expenditures.¹⁶ Most recently, the New York Times has reported that state legislatures are considering budget plans to freeze the cost of living adjustments made to Medicaid reimbursement, as well as other possible Medicaid reimbursement reductions.¹⁷

Michigan

Michigan is projected to receive \$2.27 billion in enhanced Medicaid matching payments as a result of ARRA.¹⁸ Michigan has added 50,000 new Medicaid enrollees in the last four months, with 1.65 million people who qualify.¹⁹ Despite the increasing demand for Medicaid services, it does not appear that Michigan intends to use the enhanced FMAP funding to increase total amount of funding for the program. Governor Jennifer Granholm wants to use approximately \$1 billion from Medicaid and education stimulus funds to help balance the state budget.²⁰ The Detroit News described how the state will use the federal Medicaid money to fill budget gaps but avoid violating the letter of the law. “The state can use the federal stimulus money to replace general fund money

¹¹ Nicholas Confessore, *Paterson Announces Deal on Taxes*, N.Y. Times, March 11, 2009.

¹² Iris J. Lav, Edwin Park, Jason Levitis, and Matt Broaddus, *Recovery Act Provides Much-Needed, Targeted Medicaid Assistance To States*, Center on Budget and Policy Priorities, February 13, 2009.

¹³ Henry L. Davis, *Health Care Takes it on the Chin in Budget*, The Buffalo News, April, 4, 2009.

¹⁴ Anemona Hartocollis, *City’s Public Hospital System to Cut Jobs and Programs*, N.Y. Times, March 19, 2009.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Nicholas Confessore, *Tentative Deal Reported on Cuts to State Health Care Spending*, N.Y. Times, March 26, 2009.

¹⁸ Kathy Barks Hoffman, *Michigan Gets \$464M in Medicaid Dollars*, Detroit Free Press, February 25, 2009.

¹⁹ Mark Hornbeck, *Medicaid Boost on Way*, Detroit News, February 24, 2009.

²⁰ Chris Christoff, *Michigan Schools Set to Win Big in Stimulus*, Detroit Free Press, March 6, 2009.

allocated to Medicaid, and then shift the general fund cash to other places in the budget.”²¹

Virginia

Virginia is receiving \$252 million in Medicaid stimulus grants for the first two quarters.²² The state is projected to receive a total of \$1.5 billion in enhanced Medicaid payments from ARRA.²³ According to the Washington Post, Governor Kaine and the state legislature agreed to use the freed-up funds to generally balance the budget and prevent cuts in other areas of the budget.²⁴ Katie Webb, Senior Vice President of the Virginia Hospital Association, responded to plans to divert money away from Medicaid by saying, "I guess I thought the intent of Medicaid stimulus was to use the money for Medicaid."²⁵ State Senator Mary Margaret Whipple stated that the \$800 million in federal Medicaid stimulus funding mitigated the state's responsibility to the program and the result was plugging holes in other areas of the budget like social service, public safety, and education.²⁶

West Virginia

West Virginia is projected to receive \$450 million in enhanced Medicaid matching payments as a result of ARRA.²⁷ As a result of the Act, the state's federal Medicaid match will be 80.45%. Recently, West Virginia has added 3,400 new enrollees to the Medicaid program.²⁸ According to Shannon Landrum, the Executive Assistant to the Commissioner of the Bureau for Medical Services,

“We have the ability to use it for everything. There's just going to be more federal money to backfill the state money that we used to pay for our population. So unlike other agencies receiving stimulus funding, what this means for the Medicaid program is that we need less state money appropriated to spend at the same level.”²⁹

²¹ Mark Hornbeck, *Medicaid Boost on Way*, Detroit News, February 24, 2009.

²² StateHealthFacts.org, Estimated Temporary Additional Federal Allocations to States for Medicaid Costs under the American Recovery and Reinvestment Act (ARRA) of 2009, <http://www.statehealthfacts.org/comparemaptable.jsp?ind=665&cat=4&sub=154&yr=1&typ=4&o=a&sort=in> (last visited March 26, 2009).

²³ StateRecovery.org, Virginia, <http://www.staterecovery.org/virginia> (last visited April 7, 2009).

²⁴ Alec MacGillis, *Money Stimulates Debate in States Over Plan's Goals*, Washington Post, March 9, 2009.

²⁵ *Id.*

²⁶ Nicholas F. Benton, *Obama Stimulus Saves 7,100 State Jobs, Legislators Report*, Falls Church News-Press, March 5, 2009.

²⁷ Michelle Saxton, *State Weighing Stimulus Options*, Charleston Daily Mail, March 26, 2009.

²⁸ Associated Press, *Lawmakers seek details on Medicaid stimulus funds*, Charleston Daily Mail, April 2, 2009.

²⁹ Suzanne Higgins, *Hospitals Disagree with Medicaid Over Stimulus Money*, West Virginia Public Broadcasting, April 8, 2009.

Kansas

Kansas is receiving \$71 million in Medicaid stimulus for the first two quarters and is projected to receive a total of \$440 million in enhanced Medicaid funding from ARRA.^{30, 31} Governor Kathleen Sebelius, now nominee for Secretary of Health and Human Services, proposed a budget balanced by using \$303 million in Medicaid stimulus funds, despite criticism from social service groups.³² State officials appear to view the additional Medicaid funding as fungible money that can be used to offset any other budget needs.

“An important feature of that extra federal Medicaid money, the officials said, is that it can be used to ‘offset’ expenditures from the state general fund. Lawmakers are looking to close a projected \$200 million to \$300 million general fund shortfall for fiscal 2009, which could grow to \$1 billion by the end of fiscal 2010.”³³

Indiana

Indiana is projected to receive \$1.4 billion in enhanced Medicaid matching payments as a result of ARRA.³⁴ Indiana’s unemployment rate has recently risen to 8.2 percent.³⁵ As a result, Anne Murphy, secretary of Indiana's Family and Social Services Administration, said the state is, “bracing for a big increase in people coming onto services.”³⁶ In spite of the increased demand for services and an influx of \$1.4 billion in federal Medicaid funding, the agency is not going to request the legislature increase the approximately \$8 billion a year state Medicaid budget.³⁷

Florida

Florida is projected to receive \$4 billion in enhanced Medicaid matching payments as a result of ARRA.³⁸ The legislature is considering using almost \$800 million in freed up state Medicaid stimulus funds to offset other budgetary items.³⁹ Both

³⁰ StateHealthFacts.org, Estimated Temporary Additional Federal Allocations to States for Medicaid Costs under the American Recovery and Reinvestment Act (ARRA) of 2009, <http://www.statehealthfacts.org/comparemaptable.jsp?ind=665&cat=4&sub=154&yr=1&typ=4&o=a&sort=n> (last visited March 26, 2009).

³¹ John Hanna, *Sebelius Wants to Use Stimulus on Budget Shortfall*, Associated Press, February 25, 2009.

³² John Hanna, *Parts of Kansas Gov’s Plan on Stimulus Emerging*, Associated Press, March 10, 2009.

³³ Mike Shields, *Stimulus dollars head this way for Medicaid and other programs*, Kansas Health Institute News, (February 17, 2009).

³⁴ James Carroll, *Kentucky, Indiana to get Medicaid Money Starting Tomorrow*, Courier-Journal, February 24, 2009.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ John Dorschner, *Hospitals Present Their Prescription to Legislature*, Miami Herald, March 2, 2009.

³⁹ Catherine Dolinski, *Budget Reality: Some Will Suffer*, The Tampa Tribune, March 27, 2009.

the House and Senate budget plans call for using the stimulus dollars to fund Medicaid and then transferring the same amount of state money out of the Medicaid budget.⁴⁰ The 646 nursing homes in the state are expected to receive a 3 percent reduction in reimbursement.⁴¹ Florida Senate is proposing cuts for behavioral services and reimbursement rates for providers that serve those populations.⁴²

Deborah Linton, executive director of Florida ARC, described the state's plans as "ironic" given that the funds were intended to help recipients of Medicaid.⁴³ The Florida Hospital Association has also expressed concern that despite the enhanced FMAP, the state may reduce Medicaid reimbursement to hospitals and nursing homes.⁴⁴ Lori Parham, AARP's Florida state director, raised similar objections to budget gimmicks. "We're concerned that Florida may use stimulus funds to displace state funds previously earmarked for health and human services," she said.⁴⁵ In addition to potentially impacting those served by the Medicaid program, the federal stimulus dollars are not protecting health care jobs. Nursing home operator Deborah Franklin reports that as a result of the planned Medicaid reimbursement reductions, she will have to start cutting staff.⁴⁶

Nevada

Nevada is projected to receive \$450 million in enhanced Medicaid matching payments as a result of ARRA.⁴⁷ "The influx of federal Medicaid dollars would free up state funds that would have been spent on Medicaid. Lawmakers have said that state money could be used to meet matching fund requirements for higher education funding."⁴⁸ In order for the state to access stimulus funds for education, the state's higher education funding level has to be equal to 2006 levels. Nevada needs to provide \$268 million in state funds in order to draw down the federal stimulus funds for education. The state has applied for a waiver of this requirement, but if it is not granted, the state legislature is considering using "freed up" state Medicaid funds to meet the education requirement. The state Medicaid funds have also been suggested as a source to plug budget gaps in other health and human service programs and for the state Commission on Tourism.⁴⁹

⁴⁰ Marc Caputo, *Medicaid Money to be Diverted*, Miami Herald, April, 7, 2009.

⁴¹ *Id.*

⁴² Catherine Dolinski, *Budget Reality: Some Will Suffer*, The Tampa Tribune, March 27, 2009.

⁴³ *Id.*

⁴⁴ John Dorschner, *Hospitals Present Their Prescription to Legislature*, Miami Herald, March 2, 2009.

⁴⁵ AARP.org, Stimulus "Shell Game" in Florida,

http://www.aarp.org/community/AARPFL/journals/Stimulus_Shell_Game_in_FI/1154841?cn=STREAM_AARPFL_journals_large_PAGE1 (last visited March 27, 2009).

⁴⁶ Marc Caputo, *Medicaid Money to be Diverted*, Miami Herald, April, 7, 2009.

⁴⁷ Brendan Riley, *Nevada Could Get Nearly \$1.5 Billion from Stimulus Plan*, Associated Press, February 12, 2009.

⁴⁸ Cathy Bussewitz, *Lawmakers Debate Stimulus Funds*, Associate Press, March 10, 2009.

⁴⁹ Cathy Bussewitz, *Lawmakers Support Stimulus Waiver*, Associated Press, March 20, 2009.

Conclusion

This report profiles nine states that are considering or planning to divert state Medicaid funds that have been freed up by the passage of ARRA. These states are not unique in considering using the \$87 billion in enhanced FMAP to take place of state funding shortages. When ARRA passed, the enhanced FMAP funds were discussed as a way to increase the net, both federal and state, Medicaid budgets and stimulate the economy. However, this appears not to be the case.

At a minimum, the net increase in Medicaid budgets will not reflect the previous state and federal funding of Medicaid plus the taxpayer investment of \$87 billion. The worst case scenario is that many states will divert sizeable portions of their Medicaid budgets for two-years, the length of the enhanced FMAP. There will be little transparency and accountability at the federal level to account for the enhanced FMAP because states will not be required to track the state money that has been diverted away from Medicaid. This could have been avoided. Had Congress included a requirement, similar to the one attached to education funding, that state spending on Medicaid be equal to 2006 levels in order to be eligible for federal stimulus funds it would have helped assure that this provision would be more than just a shift of financial responsibility from the states to the federal government.

The federal government's commitment to enhanced FMAP has just begun. There are still two more years of Medicaid spending that has yet to occur. Many state budgets are not finalized. The federal government could take steps to ensure Medicaid expenditures actually aid Medicaid beneficiaries. States should be required to track and be accountable for not just the expenditure of enhanced FMAP but also state Medicaid spending that may be now diverted to other budget areas. Full accountability and transparency will provide understanding of the true impact of the \$87 billion in federal Medicaid funds.