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Robert A. Malson
President

July 1, 2010

Julie Hudman, PhD
Director
Department of Health Care Finance
825 North Capitol Street, NE, 6th Floor
Washington, DC 20002

Dear Dr. Hudman:

Thank you for giving the District of Columbia Hospital Association (DCHA) the opportunity to provide comments on the proposed medical necessity rule for the Medicaid program. Our hospitals appreciate your efforts to put forth a rule that will provide additional guidance to providers as they work to ensure the best possible care. After a comprehensive review, our hospitals believe that there are notable issues with parts of the rule as written. We urge you to provide clarification in the next iteration of the rule regarding the following topics:

The Definition of “Medical Evidence”

While we appreciate the Administration’s efforts to provide a comprehensive list of treatment guidelines, the Association remains concerned that the definition of “medical evidence” allows for too much interpretation to ensure a standardized level of care for all patients or to provide any incontrovertible guidance for providers. Our providers would prefer a more precise statement of what criteria will be used to ensure consistency and inter-rater reliability among decision makers. We suggest the use of an industry-standard, objective utilization criteria—such as Interqual or McKesson’s—for making medical necessity decisions. The more standardized the process and the criteria, the more likely the outcomes will be predictable and uniform among providers and patients.

The Provision of Court-Ordered Services

42 CFR 431.250 ensures federal financial participation for Medicaid expenditures for services provided to take corrective action prior to a hearing, pending hearing decisions, to carry out a hearing decision or to extend the benefit of a hearing decision or court. The section also authorizes payments made for services provided within the scope of the federal Medicaid program and made under a court order. Delmarva routinely recognizes the necessity of court-ordered treatment and authorizes it, irrespective of their medical necessity criteria. The proposed regulation is silent regarding this common and established practice. The Association requests that in the next iteration of the rule, this aspect of medical necessity be clarified and the process validated.

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The Application of the Proposed Medicaid Necessity Rules and Procedures to MCOs

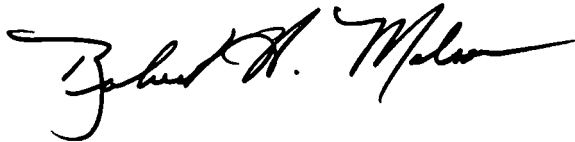
Section 9000.1(d) says that the proposed rule applies to benefits, treatments, items and services administered by managed care organizations (MCO). However, Section 9005.1 states that medical necessity denial procedures do not apply to benefits, treatments, items or services enumerated in a contract with a MCO. The conflict here is apparent. The Association requests clarification as to which, if any, of the appeal and denial procedures are applicable to Medicaid MCOs.

Time Limits and Process Concerning Retrospective Determination of Medical Necessity

The proposed regulation is silent as to how long the Department of Health Care Finance has to determine retrospectively that a service was medically unnecessary. The regulation is also silent as to how the Department will proceed in requesting or withholding refunds from providers. Guidance in these two areas is crucial in that providers need to know when a claim is fully settled and, if a refund is required, when and how they will have to pay. The Association requests that in the next iteration of the rule, these time constraints and processes be fully defined.

DCHA strongly believes that the medical necessity rule must be a useful and credible document that reflects the Administration's desire to provide a needed framework to the Medicaid program. In the current state, however, the rule fails in several respects to provide enough flexibility for patient treatment or certainty for the financial considerations of providers and hospitals. We urge you to reconsider the sections outlined above before releasing the next iteration of this rule.

Sincerely,



Robert A. Malson
President