

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 440 and 441

CMS-2261-WN

RIN 0938-A081

**Medicaid Program; Coverage for Rehabilitative Services;
Withdrawal**

AGENCY: Centers for Medicare & Medicaid Services (CMS),
HHS.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule that was published in the **Federal Register** on August 13, 2007. The proposed rule discussed our proposal to amend the definition of Medicaid "rehabilitative services." It also clarified the broad general language of the current regulation to ensure that rehabilitative services are provided in a coordinated manner, are limited to rehabilitative purposes, and are furnished by qualified providers.

DATES: Effective [OFR--insert date of publication], the proposed rule published on August 13, 2007 (72 FR 45201) is withdrawn.

FOR FURTHER INFORMATION CONTACT:

Melissa Harris, (410) 786-3397.

SUPPLEMENTARY INFORMATION:

On August 13, 2007, we published a proposed rule in the **Federal Register** entitled "Medicaid Program; Coverage for Rehabilitative Services" (72 FR 45201). The rule proposed to amend the definition of Medicaid "rehabilitative services" to include a requirement for a person-centered written rehabilitation plan and maintenance of case records.

We received a total of 1,845 public comments in response to the August 13, 2007 proposed rule. In addition, following the publication of the proposed rule, in section 206 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, Pub. L. 110-173, the Congress enacted a moratorium on December 29, 2007 that included a prohibition on the Secretary taking any action, including publication of a final rule that was more restrictive with respect to coverage or payment for rehabilitative services than the requirements in place as of July 1, 2007. That moratorium was extended until April 1, 2009 by section 7001(a)(2) of the Supplemental Appropriations Act of 2008,

Pub. L. 110-52.

Before the expiration of that congressional moratorium, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, was enacted on February 17, 2009 and, at section 5003(d), stated that it was the "sense of Congress" that the Secretary should not promulgate as a final regulation the August 13, 2007 proposed regulation concerning rehabilitative services.

In light of the clear congressional concern indicated by the statutory moratorium and the resolution opposing issuance of a final rule based on the proposed rule, as well as the complexity of the underlying issues and of the public comments received, we have decided to withdraw the August 2007 proposed rule in order to assure agency flexibility in re-examining the issues and exploring options and alternatives with stakeholders.

CMS-2261-WN

(Catalog of Federal Domestic Assistance Program No. 93.778,
Medical Assistance Program)

Dated: October 28, 2009

Charlene Frizzera,
Acting Administrator,
Centers for Medicare & Medicaid
Services.

Approved: November 17, 2009

Kathleen Sebelius,
Secretary.

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