



Department of
Job and Family Services

Ted Strickland, Governor
Douglas E. Lumpkin, Director

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Memorandum To: Richard Cornett, Ohio Optometric Association
Dixie Russell, Ohio State Chiropractic Association
Michael Ranney, Ohio Psychological Association
David Owsiany, Ohio Dental Association
Jimelle Rumbert, Ohio Podiatric Medical Association

From: Tracy Plouck, State Medicaid Director 

Subject: Status of Medicaid "Optional" Services

As a follow-up to our recent meeting, this memorandum contains information regarding the potential elimination of specific "optional" Medicaid services. While a long-term assurance in this regard may be unrealistic in light of the uncertain economic times we are experiencing, I would like to share the good news that Ohio Medicaid will be able to continue to offer these services through the end of state fiscal year (SFY) 2010 at a minimum. The recent court decision on the tobacco litigation, rendered in favor of the state, was very positive news and is summarized later in this memo.

Facts about Optional Services

As a part of the HB 1 funding structure for SFY 2010-2011, resources from the tobacco settlement have been designated to support a portion of the total amount needed for specific types of Medicaid optional services, Medicaid eligibility expansions for children, and other specific social services priorities outside of the Medicaid program.

The definition of "optional" Medicaid services is important. The term "optional," in the federal vernacular, simply means that a state may *choose* to provide specific services for adults as part of its Medicaid program. However, once a state chooses to provide the service to eligible adults, it becomes a mandatory component of the program, subject to all the other Medicaid regulations. In this circumstance, eliminating the so-called "optional" services would include:

- Ventilators for adults served in nursing homes and at home (a likely alternative would be to hospitalize those individuals with long-term ventilator dependence);
- Oxygen for adults who live at home or in the community and receive PASSPORT or other waiver services;
- A specific group of over-the-counter medications for adults;

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- Skilled therapies, including physical therapy, occupational therapy and speech therapy;
- Independent psychology services (excluding those provided in a clinic or a hospital);
- Dentistry; and
- Podiatry, chiropractic and vision services (however, these would be available in a clinic setting).

HB 1 assumed that traditional Medicaid funding sources — including the General Revenue Fund and various rotary accounts — would support the “optional” services through the end of December, and that as of January 1, 2010, the tobacco settlement funds would be utilized. There is no statutory language in HB 1 that gives a specific direction relative to the optional services. However, the financial projections contained in the budget make certain assumptions related to the elimination of the “optional” services if overall funding is not available within the Medicaid program.

Status Update

On December 31, 2009, we learned that the Court of Appeals rejected the plaintiffs' argument that the General Assembly had placed the tobacco settlement money into an irrevocable trust, thus preventing the state from altering the use of it through subsequent legislation. The court concluded that subsequent legislation could, in fact, redirect that money. The court also ruled that the contract between the Ohio Tobacco Foundation and the American Legacy Foundation—the national organization to which the Ohio Tobacco Foundation attempted to transfer the money—was void. We are grateful to all those who filed amicus briefs in support of the agency's position in this case.

Please note that there is a stay in effect to prevent Ohio from redirecting the funds to allow the plaintiffs to appeal to the Ohio Supreme Court, and the case is being appealed. ODJFS will monitor legal proceedings in the weeks ahead.

In the interim, however, ODJFS is able to commit to funding these services at least through June 30, 2010 for a number of reasons. First, we remain cautiously optimistic—especially given the strength and clarity of the Appeals Court's decision—that litigation will ultimately result in the tobacco funds being released. Second, year-to-date Medicaid caseload and expenditure data continues to track closely to earlier estimates, and we are hopeful that possible underspending in FFY 2010 could be used to support the continued provision of these optional services through June 30, 2010. Third, we continue to carefully monitor Congressional action regarding the possible continuation of enhanced reimbursement for Medicaid services, which would bring additional Medicaid resources into Ohio's budget structure relative to the amounts assumed in HB 1. Our ability to implement the cost containment measures is linked directly to our ability to balance the overall Medicaid budget for FFY 2010-2011.

As ODJFS continues to implement the numerous Medicaid cost containment initiatives that were included in HB 1, I am optimistic that we will be able to meet the targets established by Governor Strickland and the General Assembly. The Administration does not wish to eliminate these services, and we are doing everything we can to continue providing them to the more than 2.2 million Ohioans who rely on Medicaid for their health care coverage.

I hope that this information is helpful to you. Please continue to stay in touch with us about your concerns.

CC Douglas Lumpkin, Director
J. Pari Sabety, Director, Office of Budget & Management
Robin Harris, Executive Assistant to Governor Strickland