REPORT OF THE
VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Coverage of Interpreter and Translation Services for Fee-For-Service Medicaid Recipients Progress Report

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 22

COMMONWEALTH OF VIRGINIA
RICHMOND
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EXECUTIVE SUMMARY

Senate Joint Resolution 122, agreed to by the 2004 General Assembly, directed the Virginia Department of Medical Assistance Services (DMAS) to develop coverage of interpretation and translation services for Medicaid eligible persons with limited English proficiency. SJR 122 included that a progress report on the coverage development, which is the purpose of this document, be submitted by the first day of the 2005 General Assembly session.

Virginia is home to over half a million foreign-born persons, some of whom have limited English proficiency and therefore face substantial challenges communicating with their health care professionals. These individuals and their health care providers have a vested interest in ensuring that patients have the tools to communicate effectively through interpretation and translation services. For those enrolled in Medicaid and the State Children's Health Insurance Program (Virginia's FAMIS program), the Office of Civil Rights of the United States Department of Health and Human Services has provided guidance that it is the state's responsibility to ensure that enrollees with limited English proficiency have meaningful access to covered health care services. The Centers for Medicare and Medicaid Services (CMS) provided further guidance that federal financial participation is available for interpreter and translation services provided through the Medicaid and Children's Health Insurance programs.

Over half of Virginia's Medicaid population is enrolled in managed care organizations (MCOs) and are already required by contract to provide interpreter and translator services. Persons enrolled in Medicaid fee-for-service have access to these services for enrollment and transportation services; but not for medical services. Therefore, the fee-for-service population is the target of this resolution.

As a first step in seeking reimbursement for these services, DMAS is in the process of implementing a pilot project in Northern Virginia to cover interpretation and translation services through administrative claiming. Northern Virginia was chosen due to the large number of foreign-born individuals and the substantial interest of existing providers. As a result of the pilot, the agency expects to evaluate the coverage and reimbursement process to determine whether to expand the coverage statewide. The pilot is expected to be fully implemented by July 1, 2005.

Medicaid programs may reimburse interpreter and translator services through "administrative claiming". While this method can be more complex initially to set-up, it allows for simplification of the billing process through the aggregation of billing information submitted quarterly. It differs from the reimbursement of medical services where the medical provider submits an invoice each time a service is rendered. Through administrative claiming, federal funds may be obtained based on project participants' documented expenditures of non-federal public funds as of July 1, 2005 and later.

Over the next several months, implementation activities will be underway by DMAS and the participating organizations to facilitate the reimbursement process. One written interagency agreement needs to be reestablished and other agreements need to be supplemented. Specific steps need to be drafted and discussed as to the billing process.

Studies of persons with limited English proficiency receiving care in doctor's offices and other settings have indicated deficiencies in the delivery of care. The lack of a common language has been identified as leading to situations such as where the patient defers necessary medical care or does not take needed medication. The availability of DMAS reimbursed interpreter and translator services can reduce these occurrences and lead to improved health status for the patient.

Introduction

The 2004 General Assembly directed the Virginia Department of Medical Assistance Services (DMAS), through Senate Joint Resolution (SJR) 122, to seek reimbursement for translation and interpreter services from the Centers for Medicare and Medicaid Services for Medicaid eligible persons who have limited English proficiency. DMAS administers the Medicaid program and the Family Access to Medical Insurance Security Plan (FAMIS) program. SJR 122 directed DMAS to report its progress to the 2005 General Assembly. The information provided here satisfies the SJR 122 reporting requirement.

Background

Recent studies have described the inadequacies of language interpretation occurring in medical services such as a doctor-patient office visit. The consequences of these directly affect the information that is exchanged during the encounter. One study found an average of 31 interpretation errors occurring per patient visit, with a mean of 19 of these errors having potential consequences.[1] The types of errors included omitting questions about drug allergies and medical history. Full instructions on the use of topical medication were also omitted. Errors by ad hoc interpreters such as by nurses, social workers, and siblings had higher potential clinical consequences than errors by professional interpreters[2]. Other studies[3] confirm that language barriers affect multiple aspects of health care including deferring needed medical care, decreasing the likelihood of having a regular medical provider, and nonadherence to medication schedules.

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin by any entity that receives federal financial assistance. The Office of Civil Rights, under the U.S. Department of Health and Human Services (DHHS), issued its latest interpretive document on Title VI in August 2003 entitled "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons". The guidance applies to all organizations receiving funds from the DHHS including state agencies administering Medicaid and state Children's Health Insurance Programs.

The document notes that organizations are to ensure that recipients have "meaningful access" to the health and social service benefits offered so that the organization and the limited English person can communicate effectively. Though "meaningful access" is not defined in the most recent guidance, previous guidance from the Office of Civil Rights in 2000, suggests that this includes:

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[1] "Mistaken translations can cause trouble", by Andis Robeznieks, AMNews, January 27, 2003.
[2] Ibid.
[3] "Errors in Medical Interpretation and Their Potential Clinical Consequences in Pediatric Encounters, Pediatrics, Glenn Flores, MD et.al., January 11, 2003, page 6.

1) that the person receives and understands program information; and
2) that the person can effectively communicate the circumstances of his or her situation to a service provider.

A four-factor assessment tool in the 2003 Office of Civil Rights guidance referenced above is available for an organization to evaluate its obligation to provide meaningful access. The tool assesses four outcomes:

1) the number or proportion of limited English proficient (LEP) persons eligible to be served;
2) the frequency with which LEP persons come into contact with the program;
3) the nature and importance of the program to people's lives; and
4) the resources available to the organization.

However, the federal guidance does not provide benchmarks for any of the outcomes on the assessment tool, so it is unclear when the state has been successful in providing meaningful access. The stated intent of the 2003 federal guidance is to suggest a balance that ensures meaningful access to services for LEP persons while not imposing undue burdens on small businesses, small local governments and small not-for-profit organizations.

In August 2000, the Centers for Medicare and Medicaid Services (CMS) sent a letter to all Medicaid program directors informing them of the Office of Civil Rights guidance regarding responsibilities of health and human services agencies and providers in serving persons with limited English proficiency. The letter emphasized that for both Medicaid and the State Children's Health Insurance Program (Virginia's FAMIS program), federal matching funds are available for state expenditures relating to the provision of oral and written translation administrative activities and services.

Currently, over half of Virginia's Medicaid recipients are enrolled in managed care organizations. The contracts between DMAS and these organizations describe the interpreter and translator services that must be available. These requirements are based on federal regulations for Medicaid managed care plans. Items addressed include the availability of plan handbooks for non-English speaking persons and access to interpreter and translator services.

DMAS has some interpretation and translation services available for the fee-for-service population. DMAS transportation and managed care enrollment brokers utilize telephone-based interpretation and translation services. DMAS also participates in a state contract for telephone-based interpretation and translation, however, this is used only for resolution of provider billing issues.

In 2003, DMAS started collecting information on recipients' spoken language (which is stated on the Medicaid application) as part of the enrollment process. While it will take some time for this information to be collected for all recipients, it will be very useful in planning for interpreter and translation services in coming years.

Proposed Coverage of Interpretation and Translation Services

The 2004 General Assembly directed DMAS to develop coverage of interpreter and translation services and seek federal financial participation for the services rendered. Specifically, SJR 122 stated:

> *"Resolved . . . that the Department of Medical Assistance Services be requested to seek reimbursement from the Centers for Medicare and Medicaid Services for translation and interpretation services provided Medicaid-eligible persons with limited English proficiency."*

Overview of Coverage:

DMAS intends to reimburse the federal share of costs of participating organizations for interpreter and translator services to Medicaid recipients, when they are receiving Medicaid covered services. A pilot project will be established in 2005 in Northern Virginia for the initial phase of the coverage. This area was selected for the pilot due to the high proportion of limited English speaking persons. The pilot project provider participants at this time are the Northern Virginia Area Health Education Center and three health departments. Other organizations may join as well given the level of interest.

DMAS will utilize an interagency agreement with the Virginia Commonwealth University (VCU) Office of Sponsored Programs. This office is the contracting entity for the Virginia Statewide Area Health Education Centers program which is located at VCU and it will facilitate DMAS reimbursement to the Northern Virginia Area Health Education Center (AHEC). The mission of the Virginia Statewide Area Health Education Centers program is to promote health careers and access to primary care for medically underserved populations through community-academic partnerships.

Monthly billings for interpreter and translator services from the health departments will be submitted to the Northern Virginia AHEC. The AHEC will compile this information along with its billings for broker and language services and submit them to the statewide AHEC office, which in turn will submit the billings to DMAS for reimbursement. DMAS will reimburse the federal share for interpreter and translation services to the statewide AHEC. The reimbursement will then be passed to the Northern Virginia AHEC, which will pass the reimbursement based on services billed to the participating health departments.

Components of Coverage- Pilot Project:

DMAS assessed the options for developing coverage of interpretation and translation services and determined that starting with a pilot project was the most feasible approach. This approach allows for services to be offered on a limited basis, where the impact can be

evaluated and necessary changes can be made promptly. The pilot project described here consists of the following Northern Virginia localities: Arlington County, Fairfax County, and Alexandria City. The Medicaid fee-for-service population in this area, approximately 29,000 people, is the focus of this pilot.

DMAS selected this pilot area due to the high proportion of limited English speaking persons in these communities. The 2000 U.S. Census data indicate that 13.9 percent of the population in the targeted localities speak a language other than English at home and speak English less than "very well", compared to 4.6 percent statewide.

In developing this pilot project, DMAS staff met with several organizations that have expressed interest in participating in the pilot. The following organizations have agreed to participate in the pilot and DMAS staff expect additional organizations to join due to the level of interest:

- *Northern Virginia Area Health Education Center:* The Northern Virginia Area Health Education Center (AHEC) is willing to be the primary contractor. The organization will have a broker as well as service provider function. The AHEC has been providing interpretation and translation services since 1996. It provides interpreters in over 20 languages at more than 30 Northern Virginia locations. The Bridging the Gap curriculum, under a licensing arrangement with its originator the Cross Cultural Health Care Program in Washington State, is used for training of interpreters. Staff also trains other organizations using this curriculum.

- *Alexandria City Health Department*.

- *Arlington County Health Department*.

- *Fairfax County Health Department*.

All of these health departments currently provide interpreter and translator services. The delivery system for these services varies at each health department, including the use of salaried staff, contracted staff, telephonic resources, and administration of services.

Components of Coverage- Brokering of Services:

Brokering of services is necessary to ensure program integrity. The functions of the broker will include: receiving calls from recipients requesting interpretation and translation services; confirming that a DMAS covered medical service is involved; scheduling the interpreter or translator; and submitting billing information to DMAS. Recurring or "standing" requests for interpreter and translator services will be noted to expedite the scheduling process. The broker may delegate some of these functions to the health departments as appropriate.

Components of Coverage- Supplemental Agreements:

While agreements currently exist between the Northern Virginia AHEC and the health departments ("subcontractors"), supplemental agreements are necessary to facilitate Medicaid billing with the AHEC. Components of these agreements need to include:

- DMAS will reimburse the federal share of the payment for interpreter and translation services to Medicaid recipients when in conjunction with covered Medicaid services.

- DMAS will recognize three types of costs for reimbursement; (1.) direct costs for delivery of actual interpretation and translation services, (2.) direct costs for operations related to direct costs for delivery of services, and (3.) indirect costs which support a common purpose in the delivery of services such as office rent.

- The participating interpreters and translators will all have met proficiency standards, which includes minimum 40 hours training for interpreters.

- The subcontractor will be required to maintain documentation of costs, as instructed by DMAS. The non-federal, public funds portion of these costs may be used for the 50 percent match of federal Medicaid funds.

- Person-level data must be maintained by the subcontractor in a confidential manner consistent with federal Medicaid regulations, state regulations, and the Health Insurance Portability and Accountability Act (HIPAA) of 1996. "Business associate" agreements which the pilot project participants currently utilize will need to be reviewed.

- The subcontractor is to accept full responsibility for all disallowances and/or penalties that the Centers for Medicare and Medicaid Services assesses during an audit. This includes the recovery of federal match funds authorized contrary to the contract.

- A schedule for sending in monthly billing forms. A description of follow-up procedures will also be available to address billing errors, omissions and similar occurrences.

DMAS intends to participate in the development of these supplemental agreements to assure that reimbursement of federal funds can be accomplished.

Components of Coverage- Reimbursement:

Reimbursement for interpreter and translation services will involve DMAS drawing-down federal funds based on documented non-federal public funds reported by the above

organizations. DMAS utilizes a similar matching process for reimbursement of some school services and other administrative services. The amount DMAS may draw-down for reimbursement is dependent on the available non-federal public funds to match with federal funds. Participating organizations will be able to receive the federal share of the reimbursement for interpretation and translation services provided on or after the implementation date of July 1, 2005.

Federal law allows Medicaid programs to receive federal financial participation for services that are supportive of the Medicaid state plan. This is referred to as "administrative claiming". The types of services eligible are broad but include outreach, assistance to families in choosing Medicaid providers, case management, and interpretation and translation.

Billing for services eligible for administrative claiming typically does not involve an invoice each time a service is rendered but relies on monthly or quarterly financial forms sent to the Medicaid office that reflect service costs. The largest portion of the cost is usually staff salaries. Administrative claiming reimbursement by the Medicaid program is based on 50 percent federal funds and 50 percent state or other non-federal funds. States are allowed to reimburse the federal portion of the cost, when documentation is provided reflecting the total cost of the service including state or other non-federal public matching funds. This process in known as "certified public expenditures" under administrative claiming.

One federal rule for the administrative claiming is that the reimbursement can only be for Medicaid enrolled and Medicaid eligible persons. Particularly with indirect costs such as rent, a method is necessary to distinguish administrative costs incurred in service delivery to the Medicaid population and to the non-Medicaid population. This may involve a staff time study conducted by the participating organization a few days during a quarter. It could involve the proportion of Medicaid individuals receiving interpreter services of all individuals receiving interpreter services. Other federal rules apply as well including that services reimbursed under administrative claiming cannot overlap with services covered elsewhere in the Medicaid program. The components of administrative claiming, reflecting items such as the time study, are complicated and take time to develop for covering services such as interpretation and translation.

Components of Coverage- Implementation Activities:

A written agreement has been in place which can facilitate DMAS payment for the services. DMAS signed in August 2003 a one-year interagency agreement with the Virginia Commonwealth University Office of Sponsored Programs, to obtain the services of the Virginia Statewide Area Health Education Centers. The Office of Sponsored Programs is the university's central office for the management and approval of all externally sponsored projects. The agreement includes practice support for Medicaid providers in medically underserved areas or areas with medically underserved populations. The VCU statewide AHEC program office has executed agreements with the local AHEC programs. DMAS

reimbursement for services under the agreement in the past were to the statewide AHEC office, which were then passed to the local AHECs. DMAS included the agreement in its cost allocation plan for reimbursement under administrative claiming, which was sent to the Centers for Medicare and Medicaid Services and the U.S. Department of Health and Human Services.

Efforts are underway to reestablish this agreement which will need to reflect this pilot project. As previously described, DMAS intends to reimburse the VCU AHEC office the federal share of the recognized costs for interpretation and translation services. That office will reimburse the Northern Virginia AHEC which will reimburse the health department subcontractors.

Another implementation activity is that the operational aspects of the coverage need to be delineated for the Northern Virginia AHEC and health departments. These will include the following:

- Requests for interpretation and translation can only be made of the Northern Virginia AHEC and subcontracting organizations.

- Interpretation and translation are covered only when they are associated with a Medicaid covered service. The covered services will be part of the DMAS conducted training. Medicaid recipients enrolled with Medallion II health plans are not eligible for interpretation and translation under this pilot project.

- Requests for interpretation and translation services need to be made by Medicaid providers. This ensures that the recipient has an appointment for care.

- The request for service needs to be made at least 48 hours in advance, not including holidays and weekends.

- DMAS cannot reimburse for canceled appointments and "no-shows."

- An interpretation and translation service form needs to be completed by the Northern Virginia AHEC or subcontractor staff prior to the delivery of the medical service.

DMAS will undertake certain implementation activities within 30-60 days of the start of the pilot project. The objective is to minimize any start-up difficulties. The activities include:

- A written notice to the DMAS provider population serving the pilot area, informing them of the interpretation and translation services.

- Training sessions by DMAS of Northern Virginia AHEC and subcontractor staff as to covered services and reimbursement process.

- Modification of fiscal subsystems to ensure accurate and timely reimbursement for the interpretation and translation services.

Conclusion

SJR 122 directed the Department of Medical Assistance Services to develop coverage of interpretation and translation services. To accomplish this, DMAS has undertaken the development of a pilot project in Northern Virginia to begin reimbursement of these services. The results from the pilot project will be useful in expanding this coverage to other parts of the state.

Federal Medicaid guidance allows for the use of administrative claiming as the means for reimbursing interpretation and translation services. While this type of claiming is new to organizations delivering interpretation and translation services and has some complexity initially, it allows for reimbursement of services without requiring the submission of invoices for each service rendered.

DMAS looks forward to the development of the pilot project for the coverage of interpretation and translation to improve access to covered services. By assisting the Medicaid recipient in understanding the medical care received, the coverage can potentially lead to improvements in health status.

SENATE JOINT RESOLUTION NO. 122

Requesting the Department of Medical Assistance Services to seek reimbursement from the Centers for Medicare and Medicaid Services for translation and interpretation services provided Medicaid-eligible persons with limited English proficiency. Report.

Agreed to by the Senate, February 17, 2004
Agreed to by the House of Delegates, March 9, 2004

WHEREAS, according to the 2000 Census, more than 570,000 foreign-born persons lived in Virginia, representing an increase of 83 percent since the last Census a decade ago; and

WHEREAS, the foreign-born in Virginia primarily live along the urban corridor, and in localities in the Shenandoah Valley and Southwest Virginia, which have experienced dramatic growth; and

WHEREAS, according to the Joint Legislative Audit and Review Commission's report, The Acclimation of Virginia's Foreign-Born Population (2003), "three quarters of Virginia's foreign-born population emigrated from Asia or Latin America," and persons from European and African countries also reside in Virginia; and

WHEREAS, although English is the predominant language of the United States, the nation is home to millions of persons with limited English proficiency; and

WHEREAS, many of these persons are poor, illiterate in their own language, speak little or no English, and are eligible for educational, social, and medical services at taxpayer expense; and

WHEREAS, many of these persons are also eligible for translation and interpretation services, and localities have incurred substantial costs to provide these required services; and

WHEREAS, in August 2000, the Office of Civil Rights of the United States Department of Health and Human Services, issued "Policy Guidance on the Title VI Prohibition Against National Origin Discrimination as It Affects Persons with Limited English Proficiency," which requires all health care providers and entities that receive federal Medicaid or State Children's Health Insurance Program (SCHIP) funds to provide oral and written translation or interpretation services to enable such persons to access services; and

WHEREAS, many health care providers have expressed concern regarding the high costs of such services compared to low Medicaid reimbursement rates, and providing translation and interpretation services for persons with limited English proficiency does not guarantee that they understand the medical information provided or the medical procedure that may be performed or recommended; and

WHEREAS, the poor and racial, ethnic, and language minority populations are likely to have more health problems, be uninsured or under-insured, and receive health care through the Medicaid program; and

WHEREAS, often Medicaid reimbursement rates for medical procedures are minimal, and medical associations and specialty groups in many states oppose these requirements, fearing that physicians will withdraw from the Medicaid program, limit the number of Medicaid patients they serve, or accept only patients who speak English; and

WHEREAS, the low reimbursement rate afforded health care providers affects the supply of participating providers and directly impacts Medicaid recipients' access to health care services; and

WHEREAS, under the Office of Civil Rights guidelines, federal matching funds are available to states for expenditures related to "oral and written translation administrative activities and services provided persons with limited English proficiency, whether provided by staff or contract interpreters, or through a telephone service"; and

WHEREAS, the United States Department of Health and Human Services directed this information to Governors in August 2000; however, only five states--Hawaii, Maine, Minnesota, Utah and Washington--have acted to receive federal funds to cover translation and interpretation services for these Medicaid beneficiaries; and

WHEREAS, the Joint Legislative Audit and Review Commission recommended in its report, noted previously, that the state request Medicaid reimbursement for interpretation and translation services, and that the Department of Medical Assistance Services complete a plan and submit an application to obtain reimbursement for such services to the Centers for Medicare and Medicaid Services (CMS) of the United States Department of Health and Human Services; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Department of Medical Assistance Services be requested to seek reimbursement from the Centers for Medicare and Medicaid Services for translation and interpretation services provided Medicaid-eligible persons with limited English proficiency.

The Department of Medical Assistance Services shall submit to the Division of Legislative Automated Systems an executive summary and report of its progress in meeting the requests of this resolution no later than the first day of the 2005 Regular Session of the General Assembly. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.