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MAMES

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RE: Governor's budget proposal to slash spending on vital medical supplies for disabled Minnesotans

Dear Legislator:

Governor Walz' updated budget includes severe and reckless cuts to Medicaid funding for durable medical equipment prosthetics and supplies (DMEPOS). These cuts threaten the life and safety of disabled Minnesotans who rely on the Medicaid (M.A.) program for life sustaining medical equipment and supplies. Some of these cuts are the result of a DHS proposal, which the Blue Ribbon Commission (BRC)surprisingly included the proposal in its final report, despite vocal and overwhelming opposition from the disability community. Other cuts are nothing more than an attempt by DHS to repackage old bad ideas, which have been repeatedly rejected by the Minnesota Legislature and Minnesota Courts.

These proposed cuts could not come at a worse time. DMEPOS providers have been on the frontlines fighting the COVID-19 pandemic keeping patients safe in the community and out of long-term care and hospitals at the same time their costs have increased dramatically (e.g. ventilators, oxygen, and PPE generally). With a multi-billion dollar state budget surplus, the timing of these proposed cuts is downright bizarre. And the state is working at cross-purposes with the federal government. The Centers for Medicare & Medicaid Services (CMS), last year ***recognized the critical importance of access to home DMEPOS in a pandemic and significantly raised (not lowered) its reimbursement rates*** for the most commonly prescribed DMEPOS.

The proposed budget slashes funding for needed medical supplies in three ways by:

(1) matching M.A. rates for critical categories of DMEPOS to Medicare rates (the "BRC Proposal");
(2) slashing reimbursement to 20% over a provider's acquisition cost for key items that are not covered by Medicare, including incontinence supplies; and
(3) limiting reimbursement for critical supplies used almost solely by disabled Minnesotans to 10% over acquisition costs.

The last two items are the most brazen because DHS knows that 20% does not come close to covering a provider's cost to store, deliver and bill these supplies, much less cover general overhead and a reasonable profit. DHS knows this because it tried this just a few years ago with an ill-conceived program for incontinence supplies, which limited reimbursement to 20% over acquisition cost. That program was enjoined by a Minnesota Court and repealed by the Minnesota Legislature before it was implemented, because it would have severely reduced access to incontinence products for M.A. patients. Besides being bad ideas, the last two items are not even attached to any purported savings in the budget. Accordingly, the Legislature should reject the latest DHS attempt and not pass any of these cuts for the same reasons that it repealed the incontinence program in 2019.

The BRC Proposal is similarly misguided. Minnesota already matches Medicare Rates for the items CMS included in the 21st Century CURES Act. CMS specifically did not include most items for which it has established Medicare rates in the CURES Act, because it recognized that the Medicare and Medicaid programs serve distinct populations with very different needs. Medicare rates are designed with seniors in mind, not disabled children and adults. For the limited items for which M.A. pays more than Medicare rates, matching Medicare rates would jeopardize access to specialized equipment

and supplies needed by some of the most vulnerable Minnesotans. For example, Medicare may have one rate for basic feeding tubes, but those rates do not come close to covering the cost of specialized feeding tubes that many disabled M.A. patients require. When reimbursement rates do not cover costs, providers are unable to provide the needed equipment. As referenced above, that will force some patients to move from home care to long-term care facilities, eliminating any savings for M.A., and actually increasing costs. Even more alarming, some of those patients might wind up in the hospital during the midst of a pandemic.

Also, the Governor's proposal suggests that the 21st Century Cures Act and its adoption of rates generated under Medicare's so-called "Competitive Bidding" (CB) program, somehow mandate setting Medicaid rates to Medicare rates, even for items not covered by the 21st Century Cures Act. This wrong on several levels. First, Medicare's CB program was fundamentally flawed, as CMS acknowledged saying, "***We recognize that reduced access to DME may put beneficiaries at risk of poor health outcomes or increase the length of hospital stays***." CMS has halted the failed CB program and raised rates substantially in rural areas on CB items to partially address access issues caused by the flawed program. And CMS significantly increased reimbursement for DMEPOS in most non-rural areas since the pandemic to prevent access issues for Medicare recipients.

Moreover, DHS is not interpreting the Cures Act correctly. That law does not require Minnesota to change its law and weaken its M.A. program by adopting reimbursement rates derived from the flawed and discontinued Medicare CB program. The Cures Act limits federal Medicaid reimbursement to states for a mere 275 DMEPOS items (there are thousands in total) that are, in the aggregate, in excess of what Medicare would have paid for such items. Also, of note, ***the Cures Act was passed before CMS conceded that the CB program led to access issues and discontinued the program until it could be fixed***.

DHS also has no idea how much, if any the BRC proposal will save as its savings estimate is not based on actual comparison of Medicare rates and Medicaid rates for impacted HCPC codes. And DHS has refused to supply this information despite repeated requests from stakeholders and legislators.

Reductions to Medical Assistance reimbursements already have threatened the survival of the small businesses that provide these essential supplies and equipment. If the proposed cuts were implemented, many providers would be forced to stop providing most DMEPOS items to M. A. recipients or close their businesses altogether. If they are forced to close their doors, there will not be a sufficient network of providers to serve the disability community.

Thank you for your attention to this important issue and please do not hesitate to contact us if you have any questions or would like additional information.

Respectfully yours,

Al Neumann
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