



Victoria Wachino
Acting Deputy Administrator and Director
Center for Medicaid and CHIP Services
7500 Security Boulevard
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Dear Ms. Wachino:

The American Association of Birth Centers (AABC), the American College of Nurse-Midwives (ACNM), and the National Association of Certified Professional Midwives (NACPM) are jointly writing today on behalf of Medicaid beneficiaries across the country who desire access to birth center care, but are unable to access this care because of inadequate or inconsistent implementation of Section 1905(a)(28) of the Social Security Act (SSA), as amended by Section 2301 of the Affordable Care Act (ACA). Specifically, we write to request that CMS promulgate regulations elucidating the requirements of Section 1905(a)(28). The terminology of Section 1905(a)(28) is being misinterpreted and applied in non-uniform ways, leading to confusion for providers, states, patients and Medicaid MCOs. A properly promulgated regulation would help address this uncertainty and inconsistency and ensure that Medicaid beneficiaries have adequate access to this statutorily required benefit.

We understand that CMS is considering revisions to the regulations related to Medicaid managed care. We believe it an appropriate time to promulgate regulations related to the benefit defined under Section 1905(a)(28) as well as the manner in which Medicaid managed care plans should provide this important coverage.

We request that CMS meet with ACNM, AABC, and NACPM to discuss these issues.

Cost Considerations

According to AHRQ's HCUP data, in 2012, Medicaid covered 44.75% of the births occurring in this country (approximately 1.8 million). Previous studies have estimated the proportion of births covered by Medicaid in other years to be somewhat higher.¹ Using cost data from a recent study by Truven Health Analytics, we estimate that in 2012 Medicaid spent approximately \$19 billion on maternity and newborn care through the first three month of life.² According to AHRQ, hospital discharges for pregnancy and newborn care far outnumber those for any other major diagnostic category. Together, they accounted for more than 8 million discharges in 2012.³ In a recent presentation to AABC, Dr. Steven Cha, Chief Medical Officer of the Center for Medicaid and CHIP Services noted that perinatal care

¹ Markus, et. al., "Medicaid Covered Births, 2008 to 2010, in the Context of the Implementation of Health Reform," *Women's Health Issues*, vol. 23, issue 5, e273-e280. Available at:

<http://www.whijournal.com/article/PIIS1049386713000558/fulltext#tbl1>

² "The Cost of Having a Baby in the United States," Truven Health Analytics, January 2013. Available at: <http://transform.childbirthconnection.org/reports/cost/>

³ See: <http://hcupnet.ahrq.gov/Hcupnet.jsp>

accounts for most of the top ten reasons for hospital discharge among Medicaid beneficiaries. Clearly, perinatal care is a very significant component of the Medicaid benefit.

Birth centers have a demonstrated track record of providing high quality, low cost care, exactly the type of care that CMS is vigorously seeking to support under a variety of programs. For example:

- A 2013 study looking at 15,574 planned birth center births found a cesarean rate of 6%, as compared to an expected 25% for similarly low-risk women in a hospital setting. This same study estimated that cost savings (based on Medicare payment rates) would amount to more than \$30 million.⁴
- A study by the state of Washington’s Department of Social and Health Services examining the cost to Medicaid of birth in various settings found that the cost of birth center birth among low risk women was 38% less than hospital birth for women of similar risk. These savings are partially due to the fact that the state’s facility fee to the birth centers was approximately \$600, an amount that is not sufficient to cover costs. When increased to a more reasonable amount, \$2,000, the total costs of birth center birth were still 13% lower than hospital birth, a very significant savings.⁵
- A study by the Urban Institute, published in CMS’ own *Medicare & Medicaid Research Review* found that a birth center in Washington D.C. saved the Medicaid program an average of \$1,163 per birth in 2008 dollars.⁶

Although birth centers collectively attend a very small proportion of births (totaling 16,913 in 2013) the opportunity to access savings generated by these high value providers is substantial.^{7,8} As states take steps to increase the proportion of birth center births, they will realize reductions in their expenditures on maternity care. The studies mentioned above also demonstrate that high quality outcomes can be expected. It is therefore strongly in the interest of CMS to create a regulatory structure that facilitates the provision of this important Medicaid benefit.

Policy Considerations

Section 1905(a)(28) of the SSA, as amended by Section 2301 of the ACA added freestanding birth center (“FSBC”) services, and the professional services of birth attendants in birth centers, as a new category of “medical assistance.” The new section also included FSBC services as one of the services mandated by section 1902(a)(10)(A) for Medicaid-enrolled pregnant women.

Section 1903(m)(1)(A)(i) of the SSA specifies that a Medicaid managed care plan:

⁴ Susan Rutledge Stapleton, CNM, DNP, Cara Osborne, SD, CNM, and Jessica Illuzzi, MD, MS, “Outcomes of Care in Birth Centers: Demonstration of a Durable Model,” *Journal of Midwifery and Women’s Health*, vol. 58, no. 1, January 2013.

⁵ Laurie Cawthon, MD, MPH, “Assessing Costs of Birth in Varied Settings,” Washington State Department of Social and Health Services, March 7, 2013. Available at: <http://www.iom.edu/~media/Files/Activity%20Files/Women/BirthSettings/6-MAR-2013/Cawthon%20PDF.pdf>

⁶ Embry Howell, Ashley Palmer, Sarah Benatar, and Bowen Garrett, “Potential Medicaid Cost Savings from Maternity Care Based at a Freestanding Birth Center,” *Medicare & Medicaid Research Review*, vol. 4, no. 3, 2014. Available at: http://cms.gov/mmrr/Downloads/MMRR2014_004_03_a06.pdf

⁷ Marian F. MacDorman, Ph.D.; T.J. Mathews, M.S.; and Eugene Declercq, Ph.D, “Trends in Out-of-Hospital Births in the United States, 1990–2012,” NCHS Data Brief, No. 144, March 2014. Available at: <http://www.cdc.gov/nchs/data/databriefs/db144.pdf>

⁸ Martin JA, Hamilton BE, Osterman M, Curtin SC, Matthews T. Births: final data for 2013. *National vital statistics reports: from the Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics System* 2015;64(1):1.

Makes services it provides to individuals eligible for benefits under this title accessible to such individuals, within the area served by the organization, **to the same extent as such services are made accessible to individuals (eligible for medical assistance under the State plan) not enrolled with the organization.** [emphasis added]

This statutory requirement was implemented through 42 CFR 438.206(a). Further, through 42 CFR 438.207(b) CMS has required that states ensure their Medicaid MCOs have networks adequate to provide the benefit.

To date, CMS has not promulgated regulations implementing Section 1905(a)(28). The lack of such regulations has resulted in incomplete, inconsistent and inappropriate implementation of this important new benefit. This situation prevents both fee-for-service (FFS) programs and Medicaid MCOs (MMCOs) from taking full advantage of the savings inherent in the birth center model of care. Given the prevalence of maternity care within Medicaid, failure to adequately implement this benefit is a shortcoming that merits immediate attention.

Why Regulation is Needed

The ACA was passed nearly five years ago. Section 1905(a)(28) applies in situations where a state licenses or otherwise approves birth centers. There are currently 42 states that meet those criteria. According to the Medicaid.gov website, only 25 of these states have submitted state plan amendments to bring them into compliance with the requirements of Section 1905(a)(28). This prevents women who so desire from accessing the benefits to which they are legally entitled. Furthermore it increases costs to the states and the Federal government because it necessarily forces these women to choose an option that has been clearly demonstrated to cost more and to be associated with higher rates of interventions, all of which carry risks. We believe that it is critical that CMS act expeditiously to require compliance with this provision of law. To impose such a requirement, states need the guidance available through a final regulation.

Section 1905(a)(28) contains new terms of art that are not presently defined in regulation. Specifically, “freestanding birth center” and “freestanding birth center services,” and “birth attendant.” Furthermore the statute provides for “separate payments to providers administering prenatal labor and delivery or postpartum care in a freestanding birth center,” without elucidating how those payments will be determined and what they are separate from. Because there has not been a thorough, public discussion of these terms, nor a final regulation to provide clarity, there is no common, consistently applied implementation of this new benefit.

Some states that license birth centers still do not reimburse their facility services separately from the professional services of midwives. AABC members in Georgia and Colorado report that they are not reimbursed a separate professional and facility services payment in these states. Both these states have approved State Plan Amendments. We believe that the language of the statute is clear in requiring separate payment to the free standing birth center and the providers working therein. Thus, the failure of Georgia and Colorado to provide a facility service payment fails to comply with the requirements of the statute.

We have received reports from our members that many MMCOs refuse to contract with birth centers and include them in provider networks. Medicaid MCOs in California, Oregon and Missouri state that they already cover maternity care in a hospital or with OB/GYNs so it is not necessary for them to cover

birth centers. Women who are Medicaid and CHIP beneficiaries have the right to access to birth center care if desired.

As noted above, Section 1903(m)(1)(A)(i) of the SSA requires states to ensure that MMCOs provide all services covered under their State plans. Neither a state nor a MMCO can argue that because they cover physician and hospital services associated with birth they have met the requirement to cover CNM, birth center or birth attendant services. The statute contains no provision that allows for the substitution of one benefit category for another.

AHRQ data, as well as recent studies indicate that Medicaid covers nearly half of all births in the country.⁸ MACPAC data indicate that 48% of adults covered by Medicaid are covered under a comprehensive managed care plan.⁹ When those two figures are taken together, it is reasonable to conclude that 20-25% of all births in this country are covered by a MMCO. Their behavior thus has a significant impact on the overall quality and cost of perinatal care in this country.

The state Medicaid FFS and MMCO programs need to have clear regulations defining the new birth center and birth attendant services, as well as the parameters for paying for this required benefit. We believe that the present effort by CMS to revisit its regulations with regard to MMCOs is an ideal time to both implement this new benefit and to provide MMCOs with the guidance they need to ensure that they provide this benefit in a manner that is consistent with the FFS program.

Conclusion

AABC, ACNM and NACPM request a meeting with CMS staff to further discuss these issues and the need for Rules for guidance to States. We are willing to offer our full assistance in this process. Please contact Kate Bauer at AABC or Jesse Bushman at ACNM to arrange a meeting to follow up in these matters. Thank you in advance for your assistance.

Sincerely,



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⁸ See: <http://hcupnet.ahrq.gov/>. See also: Markus, et. al., "Medicaid Covered Births, 2008 to 2010, in the Context of the Implementation of Health Reform," *Women's Health Issues*, vol. 23, issue 5, e273-e280. Available at: <http://www.whijournal.com/article/PIIS1049386713000558/fulltext#tbl1>

⁹ Medicaid and CHIP Access and Payment Commission, MACSTATS, June 2014, available at: <http://www.macpac.gov/macstats>