

California Maintenance of Effort (MOE) Issue – Lower Caps on State Contributions for Personal Care Services

Issue

In California, counties directly employ personal care providers who furnish services under the State plan. The State permitted counties flexibility to determine the (hourly) wage/benefit payment rate to personal care providers. Counties were required to contribute 35% of the cost of the personal care providers up to a wage/benefit level (funding cap) set in State law, based on the State budget each year, and 100% of the cost above that level. In addition, counties were required to set wage/benefit payment rates through a collective bargaining process.

On September 30, 2008, the wage/benefit funding cap under California law was set at \$12.10/hour. Some counties had payment rates at or above that level. Subsequent to September 30, 2008, California amended its state law to provide for a \$10.10/hour funding cap effective July 1, 2009.

California argued that, since it did not require counties to pay more than \$10.10/hour, and counties knew that they would be at risk for any payment rate above the annual funding cap, that California was not requiring counties to contribute any greater percentage than on September 30, 2008. While California originally asserted that all county contracts had a clause permitting reopening if the funding level dropped, that assertion was not borne out by the facts. Instead, California argued that all counties could have included such a clause and thus made a choice to be at risk that payment levels would exceed the funding cap. Furthermore, California noted that all counties would need to submit provider payment rates for reapproval by the State as of July 1, 2009 based on the new budget, and were not required by the State to elect to submit provider payment rates that would result in higher county obligations for the non-federal share.

Compliance with ARRA's MOE

The California arguments do not appear to be supportable because:

- 1) Rates determined by the county and approved by the State are legally binding and are not voluntary. Under California law, counties are required to use collective bargaining procedures to negotiate personal care provider wage/benefit rates and, once determined by the county and approved by the State, those rates are legally binding on all parties. California has conceded that some counties cannot reopen collective bargaining agreements and, even if they could, it is not clear that the reduction in State funding would be a basis for a reduction in provider rates through the collective bargaining process. Thus, it does not appear that the wage rates in force on September 30, 2008 are actually voluntary with counties once established.
- 2) The State's argument that counties were placed on notice of the risk for higher contributions (and should have known to include escape clauses in collective bargaining agreements) by state statute at Welfare and Institutions Code 12306.1(a) does not appear

to reflect the actual language of that provision. That provision refers to county risk for “any increase in provider wages or benefits . . . negotiated or agreed to.” This provision did not put counties on notice of any risk when provider wage/benefit rates were not being increased. In other words, the cited statute does not contemplate decreases in the funding cap and only indicates risk to the county for wage/benefit increases.

3) As important, the ARRA local contribution MOE does not distinguish between optional expenditures and mandatory expenditures under the State plan. Once the payment rate under the State plan is set, providers are entitled to that rate. Whether a different rate could have been set is not material to the ARRA inquiry. And, under the California scheme, once the rate is set, the county responsibility is not variable (and would be a higher percentage if the proposed funding cap were imposed).

As a result, CMS believes the limitation would violate the ARRA local contribution MOE. It is important to note that none of the ARRA MOE provisions would limit the State from reducing provider payment rates instead of the funding reduction that the State is currently proposing. Of course, limiting provider rates would have other consequences (limiting local flexibility and autonomy, and antagonizing providers and unions).