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Summary of CMS Regulatory Actions Impacting Children With Special Health Care Needs

According to a recent analysis commissioned by First Focus and conducted by Sara Rosenbaum, Chair of the Department of Health Policy at the George Washington University School of Public Health and Health Care Services, entitled "CMS' Medicaid Regulations: Implications for Children with Special Health Care Needs," the recent spate of Medicaid and SCHIP-related regulatory actions promulgated by CMS would have a severe impact on vulnerable children, in particular, children with special health care needs (CSHCN). The report highlights six of the most troublesome CMS actions:

- **August 17, 2007 Guidance** – Imposes a uniform, federal gross income cap in SCHIP equal to 250 percent of the federal poverty level (FPL), the equivalent of $42,925 a year for a family of three in 2007. The cap applies to states that have long covered children in this income range, as well as to states that plan to cover these children in the future. Because the Secretary of Health and Human Services does not have the direct legal authority to impose an income cap in SCHIP, the guidance requires states to meet certain conditions if they want to cover children with incomes above 250 percent of the FPL.

- **School-Based Health Services** – Eliminates federal funds for outreach, enrollment assistance, coordination of health care services, and related activities by school personnel to enroll more eligible poor children in Medicaid. The rule also would reverse current policy that allows federal funds to be used to transport children to school if the children have special health needs and receive health care services at school.

- **Rehabilitation Services** – Limits coverage for rehabilitation services that are "intrinsic elements" of other programs, such as foster care or child welfare, therefore restricting the types of rehabilitative services that states can cover with federal funds, including special instruction and therapy for children and other beneficiaries who have mental illness or developmental disabilities. Specifically, the regulations eliminate coverage for therapeutic foster care, in which children are placed in a private home with specially-trained foster parents. The regulations also eliminate coverage for "day habilitation" programs, designed to help people with intellectual and other developmental disabilities to acquire the skills they need to live in community-based settings and remain out of institutions.

- **Targeted Case Management** –Limits federal Medicaid matching funds for case management services, going beyond changes to the Medicaid case management benefit that Congress enacted as part of the Deficit Reduction Act. The regulation is contrary to longstanding Medicaid Early Periodic Screening, Diagnosis, and Treatment (EPSDT) policy and will have a serious impact on children in foster care and people with physical or mental disabilities or other chronic health conditions.

- **Hospital Outpatient Services** – Changes the definition of outpatient hospital services to parallel services provided under Medicare. Because the Medicare program only covers end stage renal disease (ESRD) children and the Medicare benefit package does not include EPSDT services, providers in states that offer special services – including developmental therapies and interventions for children with physical or mental health conditions – would no longer be able to receive reimbursement.

- **Departmental Appeals Board** – Requires the HHS Departmental Appeals Board (DAB) to consider administrative directives, in addition to regulations and the Medicaid statute when making determinations, suggesting that the DAB should apply new interpretations retroactively even when those new interpretations are not required by the underlying law. Also allows the Secretary to overrule decisions of the Board, greatly enhancing Secretarial authority.