



Documented Problems with New Mexico's Medicaid Behavioral Health Care

The State of New Mexico has requested renewal by the federal Health Care Financing Administration of the state's 1997 waiver of Medicaid rules to provide medical and behavioral health care through managed care contracts instead of the traditional fee-for-service arrangements. The current managed care system, called Salud!, contracts with three health maintenance organizations (HMOs): Lovelace Health Plan, Cimarron HMO and Presbyterian Health Plan. Review of these providers' compliance with both federal and state Medicaid mandates is required as part of the renewal process.

Two reviews were conducted: a survey of members of and providers associated with the managed care organizations by the Gallup Organization and a review of the HMOs' with state Medicaid regulations compliance by the independent Island Peer Review Organization (IPRO). Copies of publicly released reports and others not yet released, obtained by the Bazelon Center, document extremely serious deficiencies in services for children and adults with serious mental or emotional disorders in New Mexico.

1. Lack of Services

The terms of New Mexico's current waiver require the state to identify the needs of children and adults with serious mental disorders and to ensure that managed care organizations (MCOs) locate and link these individuals to appropriate providers of care so they have timely access to an appropriate range of services. The state is failing to comply with this requirement. Salud! was also out of compliance with state Medicaid rules. Specific problems are as follows.

Wait times for services violate state contract requirement

IPRO found that Presbyterian was in violation of the state's contract requirement of no longer than 14 days between an MCO member's non-urgent behavioral health care request and an appointment, unless the member requests a later time. Cimarron's policy of a 48-hour wait for primary medical care also violates the state contract's requirement of 24 hours. (IPRO Review, 1999)

Salud! has adversely affected behavioral health more than physical health and other specialty care

Fifty-six percent of behavioral health specialists asked by Gallup—twice the percentage of primary care providers and of all specialists—found Salud! members worse off than they had been under fee-for-service. Only 6% of behavioral health specialists found Salud!

members better off, compared to 11% of primary care providers and 14% of all specialists:

	Behavioral Health Specialists	Primary Care Providers	All Specialists
Better under Salud!	6%	11%	14%
Same as FFS	38%	64%	54%
Worse under Salud!	56%	25%	31%

Enrollees and providers say that behavioral health services specialty services are scarce

- Half of Salud! enrollees needing mental health care in 1999—slightly fewer than in 1998—were not easily able to get counseling services when they needed them. (The Gallup Survey of Enrollees, 1999)
- One quarter of primary care providers cannot arrange for outpatient mental health services for patients when needed. (Gallup Survey of Providers, 1999)
- One third of primary care providers cannot arrange for substance abuse services for patients when needed. (Gallup Survey of Providers, 1999)
- IPRO gave Cimarron a minimal compliance with the health checks required by Medicaid’s Early and Periodic Screening, Diagnosis and Treatment program for children (EPSDT) because the plan lacked both evidence of performance measurement and evidence of interventions to follow up on screening results.

No Medicaid case management services

Case management is a required Medicaid service. It assists the consumer in gaining access to all needed services, and is especially critical for children with serious emotional disturbance, who are served by various different agencies. According to state officials, “In children’s behavioral health, case management has virtually ceased to exist.”

“Apparently ‘care management,’ which in reality is utilization management to determine levels of care, has replaced it.” (This information is from a memo from the P&I Division, State of New Mexico Children, Youth, and Families, Department, April 22, 1999)

No intensive services are available to children with serious emotional disturbance

Under the Medicaid waiver, the state must make intensive services available to children identified as having serious emotional disturbance (SED), but the services these children need are not being provided.

“There has been little development of enhanced services. This relates also to the continued categorization of services which precludes the ‘wraparound’ approach that many times is indicated clinically and usually less costly in the long run. Current practice relies primarily

on categorical services (congregate care, outpatient therapy, etc.) and less on individualized, family focused and innovative wraparound approaches which may be more time consuming to plan and implement, but significantly more effective clinically and in preventing recidivism.” (Memo from the P&I Division, State of New Mexico Children, Youth, and Families, Department, April 22, 1999)

Delays in seeing doctors and increased use of emergency rooms

Data from member surveys confirm anecdotal information received over considerable time from families of children and adults with mental illness:

- Salud! enrollees’ ability to see a doctor as soon as they wanted declined by a statistically significant amount in 1999 compared to 1998. (Gallup Survey of Enrollees, 1999)
- Salud! enrollees went to the emergency room for care more often in 1999 than 1998. The proportion of enrollees who said they had gone “three or four times” doubled. (Gallup Survey of Enrollees, 1999)

Untimely utilization review decisions

State Medicaid rules establish standards for utilization management decisions, defining the period between a member’s seeking care and the decision whether or not to provide it.

- IPRO found Presbyterian in minimal compliance with the timelines for utilization management decisions. However, Cimarron was found in substantial compliance despite problems with its behavioral health organization. (Evaluation of MCO Performance, 1999)
- Sixty percent of Presbyterian files reviewed failed to adhere to the timelines for utilization decisions. (Evaluation of MCO Performance, 1999)
- Sixty percent of the files of Value Options (a behavioral health care subcontractor) examined as part of Cimarron’s review, failed to have timely decisions. (Evaluation of MCO Performance, 1999)

2. Excessive Administrative Costs

In a draft report prepared for the state, but later revised to drop these data, the auditing firm of William H. Mercer calculated the administrative costs of Salud!’s unusual multi-tiered capitation and subcapitation behavioral health arrangements.

For every dollar spent on Medicaid in New Mexico under Salud!, *51 cents* goes toward administrative costs and only 49 cents is used to provide services. Under the previous fee-for-service program, Mercer estimated that 67 cents of each dollar spent by the Medicaid program provided services and only 33 cents went for administrative costs. (1/12/1999)

Draft Behavioral Health Financial analysis by William M. Mercer).

3. Inadequate Grievances/Appeals/Denial of Care

Improper denials of care

- Subcontractor Value Behavioral Health has a policy that negotiation of a lower level of care with a provider does not count as a denial: “A denial and approval of a lower level of care only occurs after the provider has exhausted all appeal rights (and the denial decision is upheld) and then the provider discharges the client to a lower level of care. This is an extremely rare occurrence. Our report will show a zero or very low denial rate because providers accept the negotiated lower level of care either from the CM or Peer Advisor.” (Letter from Joseph W. Avellar, Ph.D., Value Behavioral Health, 12/4/1998). As a result, the individual has no right of appeal, because there has been no official “denial.” In effect, the negotiation of a lower level of care is an improper denial.
- The IPRO review of providers found that all three plans performed poorly in following proper procedure for denials of care. Cimarron was in minimal compliance and both Presbyterian and Lovelace were noncompliant. (Evaluation of MCO Performance, 1999)
- Value Behavioral Health failed to provide final notice to the member or provider in 80 percent of denial cases reviewed. (Evaluation of MCO Performance, 1999)

Constitutional due process rights

The state’s attorney general’s office has also been examining Salud!’s due process:

“The practical effect of the present regulations, contract, and practice is to deny a constitutional due process right to Medicaid patients. Surely it also helps MCOs to limit medical services which are necessary and/or requested because the patient and his physician are only vaguely aware of the right to appeal.... Notice is not given to the extent contemplated by federal law or consistent with the constitutional due process rights of Medicaid eligibles. New procedures must be developed to inform patients as required by law.” (The Law and Health Issues in New Mexico: An Action Plan for the Attorney General Patricia Madrid, October 20, 1999)

- IPRO identified problems in the grievance process with two plans. Cimarron was in minimal compliance and Lovelace was in substantial compliance despite several major concerns. (Evaluation of MCO Performance, 1999)

4. Lack of Key Data to Monitor

Under Requirement 2 of New Mexico’s waiver, the state must ensure that MCOs’ information systems are adequate and ready to accommodate full operations. (HCFA Waiver, May 13, 1997)

Poor quality encounter data

“During our discussions with the State, it was acknowledged that there were still problems collecting useful encounter data from the MCOs....Without useful encounter data, we do not believe the State can adequately monitor the Salud! program.” (Brooks, Koether, Cope and Allen, HCFA Review Team, Medicaid Program Review of New Mexico’s Salud! Program).

Plans do not have the data systems to monitor access to care

- IPRO gave Presbyterian and Lovelace (physical and behavioral programs) a minimal designation for failing to monitor access to specialty referral and consultations for health services. (Evaluation of MCO Performance, 1999)
- Cimarron received a non-compliance rating for failing to measure ensuring access to care and a minimal compliance rating for not measuring compliance with the state’s standard of access to care within 24 hours. (Evaluation of MCO Performance, 1999)
- Lovelace received a non-compliance rating for failing to submit all required behavioral health data. (Evaluation of MCO Performance, 1999)

5. Low EPSDT Screening Rates

EPSDT rates are extremely low, in violation of the federal requirement that 80% of Medicaid-eligible children be screened:

- In FY1997, Cimarron reported seeing 5.5% of Salud! children and conducting 0.2% of all mandatory EPSDT screens. (HCFA-416, Cimarron HMO, Fiscal Year, Annual EPSDT Participation Report, Fiscal Year 1997) In 1998, Cimarron had an EPSDT rate of 3.86% in the first quarter, 2.86% in the second quarter, and 6.07% in the third quarter. (Salud! EPSDT Quarterly Report- Revised 11/98)
- IPRO rated Presbyterian’s preventive health service counseling efforts with a minimal designation. The reviewers noted that Presbyterian had limited performance measurement for some components of the EPSDT standard and that the plan could not examine compliance with specific elements such as “anticipatory assessment.” (IPRO Review, 1999)