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EXECUTIVE ORDER No.: 006 -2011

AN ORDER LOCATING THE STATE MEDICAID OFFICE FROM THE AMERICAN SAMOA MEDICAL CENTER AUTHORITY TO THE OFFICE OF THE GOVERNOR AND PROVIDING FOR THE OVERALL FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE OFFICE

Section 1: Authority

This Executive Order is issued under the authority granted to the Governor in Article IV, Sections 6 and Section 7, Revised Constitution of American Samoa and the American Samoa Code Annotated, §4.0111.

Section 2: Purpose

The purpose of this Order is to provide for the orderly establishment of the State Medicaid Office and to provide for the duties and responsibilities of said office for the orderly planning, implementation, maintenance and revision of American Samoa's State Medicaid Plan to achieve measurable improvement in health outcomes, sustainable cost control, and a more efficient administrative structure.

Section 3. Establishment of State Medicaid Office

The State Medicaid Office is herewith established in the Office of the Governor.

Section 4. State Medicaid Office Duties and Responsibilities

The State Medicaid Office shall discharge and assume the following duties and responsibilities:

- A. To recommend appointments to the Medicaid Coordinating Council; and
- B. To prepare, review, approve, and monitor implementation of the State Plan and amendments for long term administration of the Medicaid program in the Territory; and
- C. To review, approve, execute and monitor proposed actions and recommendations of the Medicaid Coordinating Council; and

D. To ensure that the Medicaid program in the Territory is administered consistently with the U.S. law and regulations administration, U.S. Department of Health and Human Services (reference: 1998, P.L. 25-22); and

E. To act to improve overall health system performance in the Territory.

Section 5. Medicaid Director

The current Medicaid Director shall continue to serve in such capacity until such time as the Director of Health shall appoint a new director or until the Legislature provides procedures for the appointment of a new director.

Within the first six months of this Order, the Medicaid Director shall amend the Medicaid State Plan, titled *General Waiver for Medicaid Program in American Samoa* (1981), to:

- a. Establish the American Samoa Office of the Governor as the Single State Agency;
- b. Outline the organizational structure of the Medicaid Office within the Office of the Governor. The Medicaid Director shall report to the Governor through the Secretary of American Samoa who shall have immediate direct supervision of the Stated Medicaid Office and the Director;
- c. Establish the duties and responsibilities of the Medicaid Office;
- d. Identify a full list of proposed services to be eligible under the Medicaid waiver, including the addition of approved Home and Community-Based Services.

Section 6. Appointment of Medicaid Coordinating Council

Established herewith within the State Medicaid Office is the Medicaid Coordinating Council. The following positions, along with the Director of Health, are permanent members of the Medicaid Coordinating Council:

Secretary of American Samoa
Director, Department of Human and Social Services
Chairman, American Samoa Medical Center Authority Board of Directors
Chief Executive Officer, American Samoa Medical Center Authority
Chief Financial Officer, American Samoa Medical Center Authority
Medical Services Director, Department of Health

Each department represented on the Council shall provide one staff member to assist the work of the Council. The Governor may appoint additional non-permanent members to the Council as he deems necessary from time to time. Non-permanent members shall serve for two years and may be reappointed and removed by the Governor without cause.

Section 7. Council Duties and Responsibilities

The Council shall discharge and assume the following duties and responsibilities:

- A. To create, review and recommend for final adoption proposals to amend as necessary the Medicaid state plan, the annual presumed eligible report, and to assist in determining whether the Medicaid program in the Territory is carried out consistent with U.S. law and regulations administration, Department of Health and Human Services; and
- B. To review and propose actions in order to bring the Territory into compliance with federal laws, regulations and policies regarding the administration of Medicaid in the Territory; and
- C. To review and monitor any and all new, current and ongoing Medicaid compliance initiatives in the Territory, including but not limited to compliance with provisions of the Patient Protection and Affordable Care Act and the Health Care and Education Act of 2010; and
- D. Any other Medicaid related issues that may arise from time to time.

Section 8: Finality of Administrative Decisions, Policies, Rules and Regulations

In accordance with 42 CFR 43.10(e)(3), if other local agencies or offices perform services for the State Medicaid Office, they must not have the authority to change or disapprove any administrative decision of the State Medicaid Office, or otherwise substitute their judgment for that of the State Medicaid Office with respect to the application of policies, rules and regulations issued by the State Medicaid Office.

Section 9: Repealer

This Executive Order supersedes and effectively repeals all previous Executive Orders and General Memoranda regarding this specific subject matter.

Section 10: Effective Date

This order shall take effect immediately.

Dated: August 23, 2011.



TOGIOLA T.A. TULAFONO
Governor of American Samoa

cc: Per Standard List
Medicaid Coordinating Council Members

SECTION I

GENERAL WAIVER



STATE PLAN
UNDER TITLE XIX OF THE
SOCIAL SECURITY ACT
TERRITORY OF AMERICA SAMOA
CONDITIONAL ON THE
WAIVER OF MEDICAID REQUIREMENTS

By The
SECRETARY OF DHHS
Submitted By
Division of Medicaid
OFFICE OF THE GOVERNOR

AMERICAN SAMOA GOVERNMENT
PAGO PAGO, AMERICAN SAMOA

GENERAL WAIVER FOR MEDICAID PROGRAM

IN

AMERICAN SAMOA

MEDICAID DIRECTOR
DESK COPY

MEDICAID STATE PLAN
AND
GENERAL WAIVER

AMERICAN SAMOA
October, 1985

- A. _____: Use of the rate contained in this agreement is subject to any statutory or administrative limitations and is applicable to a given grant or contract only to the extent that funds are available. Acceptance of the rate agreed to herein is predicated upon the conditions: (1) that no costs other than those incurred by the American Samoa Government were included in its indirect cost pool as finally accepted and that such incurred costs are legal obligations of the American Samoa Government and allowable under the governing cost principles; (2) that the same costs that have been treated as indirect costs have not been claimed as direct costs; (3) that similar types of costs have been accorded consistent treatment; and (4) that the information provided by American Samoa Government which was used as a basis for acceptance of the rates agreed to herein is not subsequently found to be materially inaccurate.
- B. **AUDIT:** Adjustments to amounts resulting from audit of the cost allocation plan upon which the negotiation of this agreement was based will be compensated for in a subsequent negotiation.
- C. **CHANGES:** The fixed with carry-forward rate contained in this agreement is based on the organizational structure and the accounting system in effect at the time the proposal was submitted. Changes in the Organizational structure or changes in the method of accounting cost which affect the amount of reimbursement resulting from use of the rate in this agreement require the prior approval of the authorized representative of the responsible negotiation agency. Failure to obtain such approval may result in subsequent audit disallowances.
- D. **NOTIFICATION TO FEDERAL AGENCIES:** Copies of this document may be provided to other Federal offices as a means of notifying them of the agreement contained herein.
- E. **SPECIAL REMARKS:** Federal programs currently reimbursing indirect costs by means other than the rate cited herein applied to the appropriate base to identify the proper amount of indirect costs allowable to the program.

By the American Samoa Government

By the Responsible Agency for the
Federal Government

Office of the U.S Government
Comptroller for American Samoa
U.S. Department of the Interior

Peter T. Coleman
Governor of American Samoa

S.D. Jones Jr.
U.S Government Comptroller for
Am. Samoa

GENERAL WAIVER FOR MEDICAID PROGRAM

IN

AMERICAN SAMOA

GENERAL WAIVER FOR MEDICAID PROGRAM
IN AMERICAN SAMOA

A. INTRODUCTION:

Section 136 of Public Law 97-248 (HR 4961) authorized American Samoa to participate in Title XIX of the Social Security Act beginning October 1, 1982. This section gives extreme latitude to the Secretary of Health and Human Services and authorizes him to waive or modify any of the requirements of Title XIX except: 1) The Federal medical assistance percentage; 2) The limitation of \$750,000 in Federal funds; and, 3) The use of these funds for the medical services described in paragraphs (1) through (18) of section 1905(a). Congress has given this flexibility in recognition of American Samoa's unique circumstances and health care delivery system.

In requesting waiver or modification of various provisions of Title XIX, the Government of American Samoa wishes to assure the Secretary that it does not request, directly or indirectly, any waiver or modification of the three exceptions or non-waiverable provisions listed in the enabling legislation. Should any of the elements contained in the attached State Plan or outlined below appear to require a waiver or modification of these three exceptions, American Samoa is prepared to make any necessary changes in the State Plan to be consistent with Congressional intent.

B. WAIVER REQUEST:

Except for the three provisions listed in section 136, a waiver or modification is requested for any and all provisions of Title XIX of the Social Security Act, of the Code of Federal Regulations related to Title XIX and of Action Transmittals and other program or policy guidelines for the operation of Title XIX issued by the Health Care Financing Administration which are not in conformity with the operation of the Medicaid program in American Samoa as proposed in its State Plan.

assistance under Medicaid was directly linked to the "welfare" programs and would require the identification of individuals as welfare recipients - a cultural stigma that might prevent those in need of care from seeking such care.

3. 3. Cash Based Economy and The Nature of Family Resources

Since World War II, forty years ago, American Samoa has moved from an economy that was predominately subsistence based to one which is now cash based.

Virtually all resources of an extended family are communal and for the use of all the family members. As a result of this practice, it is often impossible to distinguish individual resources from immediate family resources from extended family resources. The program of imposing a traditional needs test for Medicaid eligibility becomes impractical in this context.

3. 4. The Extent of Resources Required to Develop and Operate a Traditional Medicaid Program

The operation of the traditional Medicaid program requires the establishment of a number of systems such as eligibility determination, fee schedule, reimbursement and billing procedures, quality control, fraud investigation etc. The personnel, equipment and other resources to set up these systems for the number of persons out of the total population of 33,500 would be considerable and far from cost-effective. In addition, the nature of the health care delivery and cultural realities would make the establishment of such system unnecessary or ineffective.

D. DESCRIPTION OF PROPOSED AMERICAN SAMOAN PROGRAM

Within the context of the four factors discussed above, the proposed State Plan describes a Medicaid Program that is consistent with the Samoan way and culture and has practical and economically frugal administrative requirements. As a result, this program varies considerably from the traditional state plan and Medicaid program in several areas. In particular, section 2 (Coverage and Eligibility), 4 (General Program Administration) and 6 (Financial Administration) have been reworked considerably. The proposed plan reflects a simplified approach to financial and program administration. In the area of financial management, the entries required on the HCFA-64's and 25's have been.

minimum wages for different types of employment and that each creates a higher ratio and higher poverty level and therefore a higher number of eligibles complicates this method. The process described in the State Plan would establish the lowest level of the considered options.

In the fifty states, Medicaid eligibility is not directly tied to the poverty level but rather to the cash assistance standards under AFDC, SSI etc., which are below the actual poverty level in most cases. To adjust for this fact, the poverty level determined for American Samoa would be deflated by the ratio of the public assistance needs standards to the U.S. poverty level. (It should be noted, however, that those who receive cash assistance also receive an amount of food stamps which depends on family size and income. The combination of cash assistance and food stamp bonus amount brings people much closer to the poverty level). The SSI program provides a national needs standard only for one and two person households which can be used to determine the deflator ratio. Because each state is free to establish needs standards and payment levels under the AFDC program, no national standards for families of 3, 4 etc., exist for determining a deflator. The California AFDC standards are lower than SSI levels for 1 and 2 person households but are relatively close and would seem to be used with some validity for 3, 4 etc., person households. By applying the deflator factor to the lowest poverty level, a needs standard that would restrict the number of eligibles for Medicaid to the lowest of the options would be determined. It is important to recognize that this results in a very conservative number of eligibles.

If Mississippi were used for comparison with American Samoa instead of the U.S. for median income, the poverty level would increase by 36% for each family size. The deflator factor would decrease by about 18-32 percent. As a result, the potential numbers of eligibles calculated as an example in the State Plan would not change significantly.

The negative cultural sensitivity to being identified as a "welfare recipient" indicates the need for finding an eligibility system other than the traditional method. The presumptive eligibility concept proposed in the State Plan would be responsive to the cultural sensitivity and at the same time greatly simplify the operation of the Medicaid program. Moreover, the need for individual eligibility determination is further negated by the nature of the health care system in Samoa which consists of a single, government-operated system.

The concept of presumptive eligibility is not without precedent in a needs test program. For example, the elderly as a group are presumed to meet the income test for social services under Title XX of the Social Security Act. Also, the Refugee Act allows for refugees to be determined presumptively eligible for health care services for up to 12 months after arrival in this country.

The 1980 census data should contain sufficient information to determine income by household size, which could then be used in conjunction with the income level for Medicaid eligibility established in the proposed State Plan. Presently, the census data are not yet available in sufficient detail to be used. As a result, the process and data described in the proposed State Plan appear to be the best method and information available. The estimated number of persons who would be presumed eligible may seem high, but other demographic data provide some support, although indirectly, of the estimates.

The average household size in the U.S. is 2.5 persons; in Samoa the figure is 7.1. Over 55% of the population of American Samoa is under age 19 compared to 32% of the U.S. These two facts when placed together with the amount of income by household seem to indicate a high dependent population in financial need. In addition, 1980 census data indicate that 24.4% of the persons in Mississippi are below the poverty level.

Practically, the needs level and the number presumed to be eligible in American Samoa must be compared to the grant ceiling of \$750,000. Using FY 81 costs and the number presumed to be eligible that year, the total cost of providing service to the eligible population would have been over \$1.9 million and well in excess of the federal limit of \$750,000 ($\$1.9 \times 50\% = \$850,000$). Even if the number eligible in FY 83 drops significantly to 17 percent, which is well below Mississippi but somewhat higher than the U.S. at 14 to 15 percent eligible, American Samoa would exceed the federal limit based on estimates of FY 83 Medicaid costs.

Finally, it should be noted that American Samoa has established minimal co-payments for all persons who receive services at the hospital or clinics. Payment of these co-payments is waived in certain circumstances, primarily based upon one's ability to pay. Linkage of the standards for co-payment relief to individual Medicaid eligibility would not be feasible, however, since the procedure for co-payment relief is very informal with flexible guidelines and does not involve the traditional US means test for eligibility. To use the co-payment system as a means of determining Medicaid eligibility would be impractical, culturally unacceptable and negate all of the administrative savings of a presumptive eligibility process.

E. ASSURANCES THAT NON-WAIVERABLE REQUIREMENTS OF SECTION 136 WILL BE MET

Section 6, D of the attached State Plan describes the methodology to be used for determining Medicaid costs. The methodology will assure that the costs of only those services provided for under Section 1905(a)(1) - (18) will be used for determining the federal financial participation to be claimed at a 50 percent rate up to the maximum of \$750,000. Specifically, patient records and invoices will be carefully reviewed and all non-covered services (for example, cosmetic surgery and less-than-effective drugs) will be subtracted from the medical services costs to be claimed under Medicaid.

The services used to determine the federal financial participation are currently being provided on and off-island as enumerated below and detailed in Section 3, A of the State Plan:

<u>Service</u>	<u>On-Island</u>	<u>Off-Island</u>
1. Inpatient Hospital	X	X
2. Outpatient Hospital	X	X
3. Other Laboratory and X-Ray		X
4. Skilled Nursing Services		X
5. Physician Services	X	X
6. Medical or other Remedial Care		X
7. Home Health Services		X
8. Private Duty Nursing		X
9. Clinic Services		X
10. Dental	X	X
11. Physical Therapy	X	X
12. OT, Speech, Language, Hearing		X
13. Prescribed Drugs, Dentures, Prosthetic Devices, and Eyeglasses	X	X

Mandatory services not provided on-island, even though provided off-island, are excluded because they are culturally unacceptable on-island.

The off-island services are provided by Medicare certified facilities with the exception of Tripler Army Medical Center in Honolulu and its affiliated mainland military providers to which Tripler patients may be referred for highly specialized services.