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MEDICAID MANUALS: HOW STATE ADMINISTRATIVE PROCEDURE LAWS AFFECT AGENCY SUB-REGULATORY GUIDANCE TO MEDICAID PROVIDERS

William C. Rencher, JD, MPH

INTRODUCTION

Most state Medicaid agencies use manuals or handbooks to communicate policies to their providers. These manuals come in various formats with some states having one manual for their entire program and others using multiple manuals. How descriptive these manuals are and how often they are produced depend upon a state's Administrative Procedure Act (APA)¹, which prescribes the methods and parameters for agency rule-making. Although most state APAs are based on the Revised Model State Administrative Procedure Act, details of the rule-making process vary widely by state, especially regarding how states define "rule" and the extent to which a state's legislature is involved in the rule-making process. Knowing how state level Medicaid policies are made and where they can be found can assist health policy researchers in identifying appropriate policies for research, as well as better formulating policy interventions.

METHODS

- State scan of Medicaid manuals, state APAs, and relevant case law in seven states: Connecticut, Florida, Georgia, Iowa, South Carolina, Washington, and Wisconsin.
- Special attention given to how each state's APA defines "rule" and the extent of legislative involvement in the rule-making process.
- Case law examined for judicial decisions relating to the ability of state agencies to issue manuals or other guidance outside of the rule-making process.
- Findings supplemented by phone interviews with state Medicaid officials.

RESULTS

State Administrative Procedure Acts

All seven states' APAs define a rule as "an agency statement of general applicability that implements, interprets, or prescribes law or policy"² with some slight variations in wording. However, state APAs differ in the subsequently listed items that are excluded from the definition of a rule. Some state exceptions cover agency manuals and some do not. If a state's APA does not contain an applicable exception, agency manuals are subject to the formal rule-making process, which is usually characterized by a notice and public comment period, as well as some role for the state legislature. The extent of legislative involvement varies by state. However, all states allow their full legislatures to override agency rule-making through the legislative process. Figure 1 provides an overview of the rule-making process as applied to Medicaid manuals, with state variations noted.

Case Law

Although every state studied had cases applicable to state agencies, several relating to Medicaid deserve special mention and demonstrate the different ways states view Medicaid manuals:

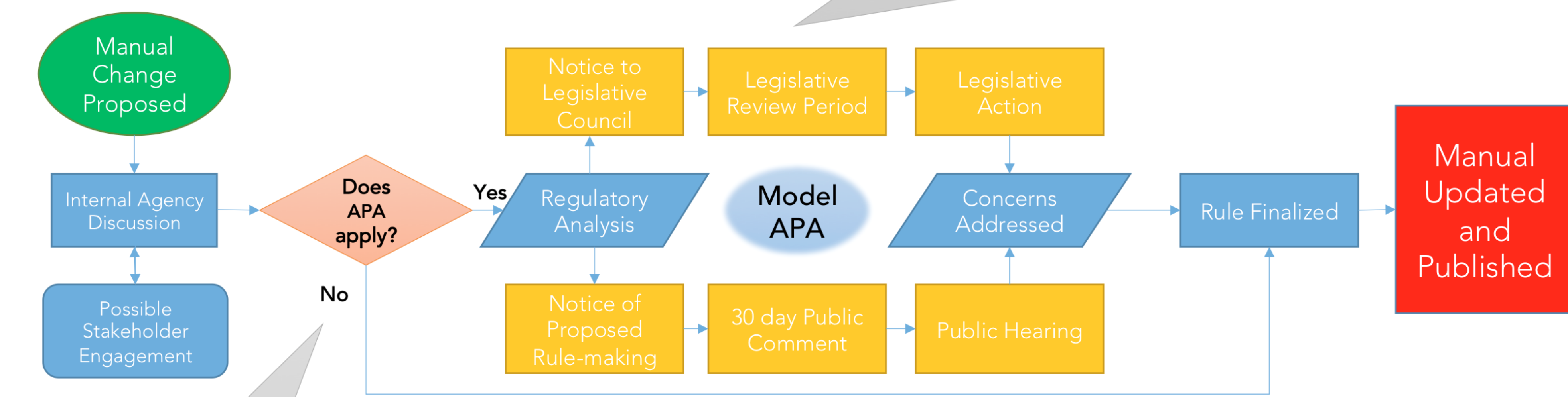
- *Coventry First, LLC v. Office of Insurance Regulator*, 38 So.3d 200 (Fla. 1st DCA 2010) and *Jenkins v. State*, 885 So.2d 1219 (Fla. 1st DCA 2003). Florida appellate courts held that "an agency statement is generally applicable if it is intended by its own effect to create rights, or to require compliance, or otherwise to have the direct and consistent effect of law."
- *A.R., et al. v. Florida Department of Health*, Case No. 15-3735RU (State of Fla. Div. of Admin. Hearings 2015). The rationale from *Coventry First* and *Jenkins* was used to invalidate a mental health screening tool as an un-promulgated rule under the Florida APA.
- *Georgia Department of Medical Assistance, et al. v. Beverly Enterprises, Inc.*, 261 Ga. 51; 401 S.E.2d 499 (Ga. 1991). The Georgia Supreme Court held that a Medicaid provider manual was not a rule, because it falls under a Georgia APA exception, and therefore was not subject to the rule-making process.
- *Pruitt Corporation v. Georgia Department of Community Health*, 284 Ga. 158; 664 S.E.2d 223 (Ga. 2008). The Georgia Supreme Court refused to give deference to the Medicaid agency's interpretation of its manuals, because the manuals were not considered to be rules and had not gone through the formal rule-making process.

Legislative Review varies widely by state. Some examples:

Connecticut—All proposed rules and amendments must be approved by a legislative regulation review committee; disapprovals can be sustained or reversed by the full General Assembly.¹

Florida—All proposed rules and amendments must be reviewed by the legislature's Administrative Procedures Review Committee; if committee objections are not addressed by the agency, the matter can be referred to the full legislature for action.²

Iowa—The legislature's Administrative Rules Review Committee has the power to delay the adoption of a rule.³



Most states define a rule as "an agency statement of general applicability that implements, interprets, or prescribes law or policy." However, several states have exceptions that exempt agency manuals from the formal rule-making process. Some examples:

Georgia—"Rules relating to loans, grants, and benefits by the state or of an agency."⁴This language includes all Medicaid manuals.

Wisconsin—"...relates to expenditures by a state agency."⁵Wisconsin uses this language to exclude manual changes from the rule-making process if they only affect providers.⁶

In addition, some states, such as Washington⁷ and South Carolina,⁸ allow non-substantive changes to be made outside of the rule-making process.

CONCLUSIONS

- State APAs and the process for creating agency manuals vary widely by state.
- States, such as Georgia and Wisconsin, whose APAs exclude Medicaid manuals from their definition of "rule," have the most flexibility to promulgate policy through their manuals.
- Other states must put these policies through the formal rule-making process. This involves both a notice and comment period for the public, as well as a role for the state legislature.
- The legislature's role further affects the speed at which these states can modify or promulgate new policies. In states like Iowa, the legislature can slow down the process, while in more restrictive states like Connecticut, the legislature can stop the process entirely.
- Understanding how Medicaid policies are formulated at the state level, as well as the role that a state's APA plays in that process, can help health services researchers better identify the most relevant policies for their research, as well as formulate appropriate policy interventions.

AREAS FOR FURTHER RESEARCH

- Does a state's rule-making process affect a Medicaid agency's ability to be adaptive to policy changes? To develop more innovative policies?
- Does a state's rule-making structure for their Medicaid agency affect health outcomes?
- Or do the various models of rule-making have enough "work-arounds" that their structure does not matter?



For more information, please contact the Georgia Health Policy Center at 404.413.0314 or visit us online at www.ghpc.gsu.edu



Figure References

¹Conn. Gen. Stat. § 54-4-170 & 171

²Fla. Stat. § 120.545

³Iowa Code § 17A.8

⁴Ga. Code Ann. § 50-13-2 (6)(i)

⁵Wis. Stat. § 227.01 (13)(k)

⁶Wisconsin uses the rule-making process for policies that affect Medicaid members. Phone Interview. Lisa Strawn, Provider Communications Coordinator, Wisconsin Medicaid. April 28, 2016.

⁷Phone Interview. Amy Johnson, Section Manager, Office of Medicaid Eligibility and Policy, Washington Medicaid. April 27, 2016.

⁸Phone Interview. Amanda Q. Williams, Manager for Health Services Policy, South Carolina Medicaid. April 28, 2016.

Poster References

¹National Conference of Commissioners on Uniform State Laws, Revised Model State Administrative Procedure Act. 2010. Chicago, IL.

²Ibid.