



National Association of State Medicaid Directors

an affiliate of the American Public Human Services Association

May 11, 2009

Jackie Garner
Acting Director
Center for Medicaid and State Operations
7500 Security Blvd.
Baltimore, MD 21244

Re: Medicaid Disproportionate Share Hospital Audit and Reporting 73 F.R. 77,904

Dear Ms. Garner:

I am writing to you on behalf of NASMD as our member states are concerned about the Medicaid Disproportionate Share Hospital Audit & Reporting (DSH) regulation that was published as a final rule in the *Federal Register* on December 19, 2008. We believe that this rule went beyond the statutory intent of the MMA's reporting and auditing requirements and will restrict the type and nature of the hospital costs that states can reimburse through DSH payments. We strongly support and understand the need for audits but we believe this regulation goes beyond what is needed for fiscal integrity. For example, this rule excludes the uncompensated costs of physician services and pharmaceuticals provided and paid for by hospitals. The DSH program has become a vital safety net to provide essential access and care for the uninsured.

The policy changes made in this final regulation pose a significant burden and economic hardship that directly affect the ability to provide this type of access. States do not have the staff or financial resources to complete the 2005 and 2006 audits by year end. Additionally, this rule requires an overly prescriptive approach for determining Medicaid and self-pay losses that serve as a basis for each hospital's Medicaid DSH cap. We understand that a state's failure to complete and report on these audits will put the state's DSH dollars at risk. While we realize a change to the effective date of the MMA provisions would need to be addressed by Congress, CMS should exercise its regulatory authority to modify the audit and reporting methodologies and postpone the due date for states to submit audits. Furthermore, we are concerned about the protocols and guidance received thus far in terms of which hospitals need to be audited from all the hospitals that receive DSH payments. While we understand the need for audits, we believe that extensive audit protocol may not be appropriate for some hospitals considering the amount of dollars involved and the breadth of the reporting requirements.

This administration should reevaluate this rule and its implications and in so doing we encourage you to postpone the deadline for the initial audits and state reports. States need additional time, which was not allotted for in the final regulation, to consider how to address the changes that have come out of this rule which impact the conduct of the audits. Additionally, we further suggest that you consider a new rulemaking process entirely so that you will have time to establish your own approach to ensure that DSH is used in the manner it was intended.

Should you have any questions please contact me at 202-682-0100 x299.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann Clemency Kohler".

Ann Clemency Kohler
NASMD Director

Cc: Rima Cohen