



National Association of State Medicaid Directors

an affiliate of the American Public Human Services Association

March 24, 2009

Jackie Garner  
Acting Director  
Center for Medicaid and State Operations  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, Maryland 21244

Dear Ms. Garner:

I am writing about the upcoming guidance that CMS is preparing in order to implement the Medicaid provisions of the recently enacted American Recovery and Reinvestment Act (ARRA). As you know, that Act provides \$87 billion in increased Federal Medical Assistance Payments (FMAP) to the states to provide substantial and immediate fiscal relief. The vast majority of the state budgets have been devastated by the current recession through reduced tax revenues and the added obligations of the Medicaid program to provide the health care safety net to those individuals and their children that have lost their health insurance. It has been said that for every one percent increase in unemployment, there are one million new individuals eligible for Medicaid.

The states were strongly supportive of the increased FMAP provision of the ARRA and the increased Federal payments will be very important to help them through these trying fiscal times. However, the increased Federal payments alone are not enough to solve the states' fiscal problems. States must be able to retain the flexibility to manage their Medicaid and other safety net programs to protect and maintain fiscal solvency. Most states are obligated to have balanced budgets and because Medicaid is a major portion of each state's budget, they must be able to modify the program to assist in balancing the overall state budget.

We participated in your question and answer sessions and we have gotten feedback from many states that have met with your staff to discuss the various conditions that affect the states' ability to draw down and retain the increased FMAP. While final guidance has not yet been released, we are greatly concerned about the direction that the guidance is taking and believe that if it is issued in the form that it appears it will be, many states will be unable to take advantage of the increased FMAP and the states will be further harmed by this recession. Given the delay in guidance, many states will be in a position to return stimulus funds already received.

The two areas of the ARRA that are of the most concern to the states are the maintenance of effort provision and the prompt payment provision. These provisions can greatly limit a state's ability to draw down and retain the increased FMAP payments.

With respect to the maintenance of effort provision, the law makes a state ineligible for increased FMAP if it uses "eligibility standards, methodologies, or procedures" under its state plan or any waiver that are more restrictive than the standards, methodologies, or procedures as in effect on July 1, 2008. In discussions with your staff and the states, it appears that your guidance will consider that any change in a state benefit program under the thought that any program change that restricts an individual from accessing or acquiring a single benefit that could have been accessed on July 1, 2008, would trigger the maintenance of effort and disqualify a state from receiving the increased FMAP.

The statutory language limits the maintenance of effort provisions to eligibility standards, methodologies or procedures under the state plan or waiver. The law allows states the ability to maintain the flexibility to manage their programs efficiently and effectively, including the flexibility to change payment rates, service delivery, benefits or manage access to benefits. The ability to modify medical necessity processes, level-of-care determinations and eligibility redetermination frequencies must not be brought under this maintenance of effort provision as a change in eligibility standards, methodologies or procedures. States must be able to use their ability to manage their Medicaid programs without the fear of losing their increased FMAP.

In addition, as stated above, the maintenance of effort provision discusses restrictions in eligibility standards, methodologies, or procedures under the state plan or waiver (emphasis added). Therefore, review of this requirement should be restricted to those standards, methodologies or procedures that are routinely processed in the state plan or waiver review and should not extend to material that is not part of CMS's routine review process.

With respect to the prompt pay provision, our understanding is that you are considering a process of monitoring compliance with the provision that would require every state to make costly changes to its Medicaid management information system (MMIS). The Congressional purpose of the prompt pay provision is to ensure that the increased federal funds are promptly distributed to health providers. There is nothing in the law that indicates that the states retrofit their payment systems to comply with the provision. In addition, the financial burden and the time constraints of making these types of changes to the MMIS system are enormous. We believe that there are a variety of ways that a state could measure and report its compliance with this provision. We would be happy to discuss various alternatives that states could implement to comply with this provision to show that states have a variety of ways of assuring compliance without having to implement costly changes to their MMIS. Moreover, the statute specifically permits CMS the ability to grant waivers to this provision if there are exigent circumstances that would prohibit a state from meeting its timely payment and/or reporting requirements. We believe in certain circumstances that the conversion to a new MMIS system would permit a waiver under this provision or the regulations associated with section 1902(a) (37) (A) to protect a state from losing any increased FMAP.

As I mentioned previously, these provisions are of great concern to the states because they have enormous financial ramifications to the state budgets. Therefore, it is very important that the states have clear guidance in a timely way. We understand the pressure you and your staff have been under to develop the guidance for the states. To that end, we appreciate the efforts that you are making in preparing the upcoming guidance and hope that you will consider these comments in that process.

If there is any additional information that you need or if there is anything that we can do to assist you, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Clemency Kohler". The signature is fluid and cursive, with a large initial "A" and "K".

Ann Clemency Kohler  
Executive Director

cc: Rima Cohen, Counselor to the Secretary  
Charlene Frizzera, Acting Administrator  
Carol H. Steckel, NASMD Chairperson  
Matt Salo, NGA  
Joy Wilson, NCSL