



National Association of State Medicaid Directors

an affiliate of the American Public Human Services Association

February 5, 2010

Cynthia Mann
Director
Center for Medicaid and State Operations
7500 Security Blvd.
Baltimore, MD 21244

Re: Enhanced FMAP from ARRA and the application to the Clawback

Dear Ms. Mann:

I am writing to you on behalf of the National Association of State Medicaid Directors (hereinafter "NASMD") as our member states are concerned about CMS' position that the enhanced FMAP funding available through the American Recovery & Reinvestment Act (hereinafter "ARRA") is not applicable to the clawback payments. We request that you overturn this decision immediately as it imposes an improper and unfair costs on states since they would have received the enhanced FMAP if they continued to provide the Part D pharmacy benefit under the Medicaid program. In addition, the clawback methodology was not specifically exempted from the enhance FMAP methodology in statute.

We believe that CMS's position, as outlined in "questions and answers #10" dealing with Section 5001 of ARRA (informal guidance issued 3/25/09 and 4/24/09), is contrary to the terms of the ARRA statute and is also in conflict with the terms of the clawback provisions of the Medicaid statute (Title XIX of the SSA section 1935(c), requiring use of the FMAP "applicable to the State for the fiscal year in which the month occurs"). In addition, this interpretation is incorrect since the purpose of the clawback is to require a calculation based on what the states would have paid for drugs in the absence of Part D. Finally, the ARRA statute itself outlines when the enhanced FMAP applies and then it lists enumerated exceptions for situations when it will not apply and the clawback is not listed as an enumerated exception in the ARRA law. In summary, the clawback payment is clearly subject to calculation based on the state's FMAP and that FMAP was changed by the ARRA, it is clearly a title XIX payment as prescribed in federal law, and it is not on the ARRA list of items listed as not being subject to the ARRA FMAP. Therefore, we believe that CMS is obligated by federal law to apply the ARRA FMAP rates to the clawback payments.

As an association representing state Medicaid directors' interests we request that you immediately apply the enhanced FMAP to clawback payments for months that fall within the ARRA time period. Thank you for your time and attention to this request and we are open to further discussions, guidance, or the like to help rectify this situation in a timely manner.

Sincerely,

Ann Clemency Kohler
NASMD Director

Carol Steckel
NASMD Chair
Commissioner, Alabama Medicaid