



National Association of State Medicaid Directors

an affiliate of the American Public Human Services Association

August 13, 2009

The Honorable Henry Waxman
Chairman, Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Re: 60 day rule contained in H.R. 3200

Dear Chairman Waxman,

On behalf of the National Association of State Medicaid Directors (NASMD) we applaud your work on Health Care Reform, H.R. 3200. We would like to draw your attention to the specific section in H.R. 3200 pertaining to overpayments attributable to fraud and abuse also known as the "60 day rule". We are pleased that H.R. 3200 amends Section 1903(d)(2)(C) of the Social Security Act to allow up to one year for repayment of the federal share in cases due to fraud but we believe it is critical that this be extended to all recovery efforts. Both state and federal interests are best served when the State Medicaid agency is diligent in identifying and recovering dollars lost through waste, fraud, and abuse. However, under the current regulation, states are liable for 100% of the overpayment and/or losses due to fraud and abuse once they are identified. In cases where providers may flee the jurisdiction, but which the state can't demonstrate are bankrupt or out of business the state bears the entire burden for recovering losses and must refund the federal share regardless of whether the funds can be recouped. We believe that the losses due to fraud and abuse should be shared between the states and federal government. This rule needs to be more consistent and clear so that states are not penalized for their diligent work in pursuing waste, fraud, and abuse when the money proves to be uncollectible. Thus, we are requesting that you further amend the language contained in H.R. 3200 so that it requires the state to refund the federal share of the overpayment in the quarter in which the recovery is made, regardless of when the overpayment was discovered.

Thank you for your time and attention to this request. Should you have any questions please feel free to contact me at 202-682-0100 x299.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Clemency Kohler".

Ann Clemency Kohler
NASMD Director

Cc: Cindy Mann