

**Congress of the United States**  
Washington, DC 20510

June 1, 2010

The Honorable Kathleen Sebelius  
Secretary, U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Sebelius:

We write to request that you continue through Medicaid state plan rate year 2012 the previously issued guidance that CMS will not implement disallowances resulting from Medicaid State Plan Disproportionate Share Hospital (DSH) audits. This additional time will allow CMS to review the initial DSH audits due this year in order to provide constructive feedback before states are subjected to disallowance risk.

As you know, the DSH Audit and Reporting Rule (“the Rule”) was issued to implement new transparency requirements for Medicaid DSH payments mandated by the Medicare Modernization Act of 2003 (MMA). We are concerned that the Rule implements dramatic policy changes that go far beyond the mandate for increased transparency included in the MMA. Specifically, the substantive change in policy with respect to the definition of “DSH-eligible costs,” including the definition of what it means to not have insurance, will greatly affect many hospitals in our home states.

In addition to our concerns, providers in various states and a number of state Medicaid agencies have expressed their concerns to you about the enormous consequences of this policy change on safety net hospitals. Further, the American Hospital Association, the National Association of Public Hospitals and Health Systems, and the National Association of State Medicaid Directors have also formally expressed their concerns to your department.

To give states time to adjust their Medicaid DSH methodology, the Centers for Medicare and Medicaid Services (CMS) provided a transition period by not implementing disallowances resulting from audits for years 2005-2010. Instead, states are expected to modify their DSH policies for the 2011 plan year based on the results of the 2005-2010 audits. Under the Rule, initial audits were due in 2009, allowing ample time for CMS to review state DSH policies and request changes based on the DSH methodology mandated by the Rule. CMS delayed this deadline to submit initial audits until the current plan year which starts in June 2010 for many states.

Although our DSH recipients are very grateful for the transition time, the new deadline does not allow CMS time to provide constructive criticism of initial audits so

that states may adjust their programs without fear of punishment. As a result, states have become fearful of potential disallowances for the upcoming state plan year, and are imposing restrictive requirements on DSH payments based on the definitions contained in the Rule. This will have a devastating effect on vulnerable individuals' access to care at critical safety net providers and in some cases, at facilities operated by state agencies.

Given these concerns, we respectfully request that CMS extend the transition period where states are not subject to disallowance risk through Medicaid state plan rate year 2012. This additional time will allow CMS to review the initial audits due this year, before states are subjected to disallowance risk based on policy changes made in the Rule.

Thank you for your consideration of this request. As the deadline rapidly approaches, we look forward to your prompt response.

Sincerely,

<u>Mary Ganshin</u>	<u>Dan Vitter</u>
<u>Robert Menendez</u>	<u>Chuck Schumer</u>
<u>Frank R. Lautenberg</u>	<u>Thad Cochran</u>
<u>Kirsten E. Gillibrand</u>	<u>Al Cas</u>
<u>Bill Cassidy</u>	<u>Charles Schumer</u>
<u>Rodney Alexander</u>	<u>Michael B. Eni</u>

Sam Cole

Myrtle I. Kellogg

Louise M. Slaughter

Art R.

Charles B. Darr  
Frank

Joe E. Senner  
Art

Bess Canahn

Dan Moffer

Raul M. Grijalva

Art

Keith Elton

h h

Yvette D. Clarke

Emanuel Leaver

Allen Sies

J. Sullivan

Bill Pasarell Jr

Ed. Israel

Jenny Reiberg Jr Ann Emerson

Manly

Arnold Radler

Gregory W Meeks

Carolyn McConthy

Chris Smith

Bill Owens

Mary L. Ackerman

W. H. H.

Colli C. ~~Paul~~

Eliot L. Engel

Joseph ~~Rowley~~

Frank A. ToBriador

Lisa M. ~~Sheep~~

Charles S. ~~J~~

Paul D. Tenko

Frank Pallone Jr.

Michael C. Malley

Charles A. Zenger

Brian Hyman

Gregory