DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

Center for Medicaid and State Operations

March 31, 2006 **SMDL #06-010**

Dear State Medicaid Director:

This letter is one of a series that provides guidance on the implementation of the Deficit Reduction Act of 2005. On February 8, 2006, President Bush signed into law the Deficit Reduction Act (DRA) of 2005 (Pub. L. No. 109-171). Section 6085 of the DRA created a new section 1932(b)(2)(D) of the Social Security Act (the Act). This provision establishes a limit on the amount to be paid non-contracting providers of emergency services at the amount that would have been paid if the service had been provided under the State's FFS Medicaid program.

Prior to enactment of this legislation, there was no Federal law or regulation governing the amount of payment for emergency services provided to Medicaid beneficiaries who received these services by a provider who did not have a contract with the beneficiary's Medicaid managed care entity. There were often disputes over the rate at which the provider of emergency services would be paid. This legislation establishes a limit on the amount that emergency service providers who do not have a Medicaid managed care contract can be paid by Medicaid managed care entities.

Under this provision, any provider of services that does not have in effect a contract with a Medicaid managed care organization (MCO), prepaid inpatient health plan (PIHP), or prepaid ambulatory health plan (PAHP), and that provides emergency services to a beneficiary enrolled in that Medicaid managed care entity, must accept as payment in full no more than the amount it would receive if the services were provided under the State's fee-for-service (FFS) Medicaid program.

This rule applies whether the non-contracting provider is within the State or outside of the State in which the managed care entity has a contract. This rule does not apply to payments made by the State on behalf of enrollees in a State's primary care case management system. This letter contains initial guidance on this new legislative authority, which is effective on January 1, 2007.

States must amend any existing MCO, PIHP, and PAHP contracts that have provisions governing payment for emergency services at non-contracting providers that are inconsistent with the requirements of new section 1932(b)(2)(D) (i.e. which would require payment of an amount in excess of State FFS rates) before January 1, 2007. As of that date, all of these entities which cover emergency services outside of their contracting network must limit the amount to be paid non-contracting providers for services, which meet the definition of emergency in section 1932(b)(2)(B) of the Act, to no more than the amount that would have been paid if the service had been provided under the State's FFS Medicaid program. For services provided by non-contracting hospitals, this amount

must be less any payments for indirect costs of medical education and direct costs of graduate medical education that would have been included in FFS payments. In any State where Medicaid rates paid to hospitals are negotiated and not publicly released, the applicable payment amount would be the average contract rate that would apply for tertiary hospitals.

Should you have any questions regarding this new legislation, or submission of a contract in order to reflect the establishment of this provision, please contact the CMS Regional Office serving your State.

Sincerely,

/s/

Dennis G. Smith
Director

Enclosure

cc:

CMS Regional Administrators

CMS Associate Regional Administrators
for Medicaid and State Operations

Martha Roherty
Director, Health Policy Unit
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

Jacalyn Bryan Carden
Director of Policy and Programs
Association of State and Territorial Health Officials
Page 3 – State Medicaid Director

Christie Raniszewski Herrera
Director, Health and Human Services Task Force
American Legislative Exchange Council

Lynne Flynn
Director for Health Policy
Council of State Governments