



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

December 15, 2006

SMD# 06-026

Dear State Medicaid Director:

This is one of a series of letters that provide guidance on the implementation of the Deficit Reduction Act of 2005 (DRA), P.L. 109-171. This legislation makes a number of changes intended to strengthen States' ability to identify and collect from liable third party payers. These changes are described briefly below and are discussed in detail in the questions and answers enclosed with this letter.

Federal law generally requires health insurers and other third parties legally liable to pay for health care services received by Medicaid recipients to pay for such services primary to Medicaid. However, Medicaid agencies often pay claims for which a third party may be liable because they lack information about the existence of other coverage. The DRA made several changes to the third party liability provisions of the Medicaid statute which are designed to enhance States' ability to identify and to obtain payment from third party resources that are legally responsible to pay claims primary to Medicaid. Specifically, section 6035 of the DRA amended section 1902(a)(25) of the Social Security Act (the Act):

- (1) To clarify which specific entities are considered "third parties" and "health insurers" that may be liable for payment and that cannot discriminate against individuals on the basis of Medicaid eligibility; and
- (2) To require that States pass laws requiring health insurers:
 - To provide the State with coverage, eligibility and claims data needed by the State to identify potentially liable third parties;
 - To honor the assignment to the State of a Medicaid recipient's right to payment by such insurers for health care items or services; and
 - Not to deny such assignment or refuse to pay claims submitted by Medicaid based on procedural reasons (e.g., the failure of the recipient to present his/her insurance card at the point of sale, or the State's failure to submit an electronic, as opposed to a paper, claim).

States must submit a State plan amendment (SPA) providing assurances that the required laws are in effect in the State. Some States may already have the requisite laws. These States should submit an amendment to their State plan as soon as practicable. States that do not currently have the laws mandated by the DRA should enact the required legislation during their next legislative session and submit a SPA as soon as the legislation has been enacted.

The enclosed questions and answers explain in more detail the specific changes made by the DRA to the provisions of the Medicaid statute governing third party liability and the steps States must take in order to comply with the new provisions.

If you have any questions, please contact Gale Arden, Director, Disabled and Health Programs Group, at 410-786-6810, or by e-mail at Gale.Arden@cms.hhs.gov.

We look forward to working with you as you implement this legislation.

Sincerely,

/s/

Dennis G. Smith
Director

Enclosures

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

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Director of Policy and Programs
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