



Center for Medicaid, CHIP and Survey & Certification

SMD #: 10-026
ACA#: 13

December 30, 2010

**Re: Prohibition on Payments to Institutions or
Entities Located Outside of the United States**

Dear State Medicaid Director:

This letter provides information as part of a series of guidance on the implementation of the Affordable Care Act of 2010. Specifically, this letter provides guidance on a Medicaid payment provision -- Section 6505 -- entitled, *Prohibition on Payments to Institutions or Entities Located Outside of the United States*.

Section 6505 of the Affordable Care Act amends section 1902(a) of the Social Security Act (the Act), and requires that a State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States (U.S.). This section of the Affordable Care Act is effective January 1, 2011, unless the Secretary determines that implementation requires State legislation, other than legislation appropriating funds, in order for the plan to comply with this provision.

For purposes of implementing this provision, section 1101(a)(2) of the Act defines the term "United States" when used in a geographical sense, to mean the "States." Section 1101(a)(1) of the Act defines the term "State" to include the District of Columbia, Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, when used under Title XIX.

The phrase, "items or services provided under the State plan or under a waiver" refers to medical assistance for which the State claims Federal funding under section 1903(a) of the Act. Tasks that support the administration of the Medicaid State plan that may require payments to financial institutions or entities located outside of the U.S. are not prohibited under this statute. For example, payments for outsourcing information processing related to plan administration or outsourcing call centers related to enrollment or claims adjudication are not prohibited under this statute.

However, payments for items or services provided under the State plan to financial institutions or entities such as provider bank accounts or business agents located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa are prohibited by this provision. Further, this provision prohibits payments to telemedicine providers located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa. Additionally, payments to pharmacies located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa are not permitted.

The Centers for Medicare & Medicaid Services (CMS) will require that, in the case of providers that have provided medical assistance or covered items and/or services to Medicaid beneficiaries under the State plan or under a waiver program, and are requesting reimbursement from the State Medicaid program, such reimbursement must be provided to financial institutions or entities located within the U.S. If it is found that payments have been made to financial institutions or entities outside of the U.S., States must recover these payments and must forward any Federal match for such payments to CMS consistent with the guidelines specified in Federal regulations at 42 CFR Part 433.

Any audits of claims by CMS to assure compliance with this provision will begin no earlier than June 1, 2011 and will only review claims submitted on or after June 1, 2011 for compliance with this section. Beginning on that date, all claims for payments to any financial institution or entity located outside of the U.S., Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa must be denied, unless the Secretary determines that implementation requires State legislation. If a State is able to implement this provision earlier than June 1, 2011, however, CMS encourages them to do so.

State's Medicaid Management Information Systems (MMIS) and the Advanced Planning Document (APD) Process

This provision may require States to implement functional changes to the Medicaid Management Information System (MMIS). Changes may include an edit or “flag” on provider claims so that provider claims for reimbursement that have been directed to be paid to financial institutions or entities located outside of the U.S. will be denied, and therefore, not paid by the State Medicaid program. If functional changes are needed to a State's MMIS, States must submit Advanced Planning Documents (APDs) to request funding for such changes. Funding is available for system design, development, and installation expenditures at a 90 percent Federal matching rate and, for system maintenance and operations expenditures, at a 75 percent Federal matching rate. APDs must be submitted in compliance with the Federal requirements specified in 45 CFR Part 95. CMS will accept the submission of APDs simultaneously with the submission of SPAs. Your CMS Regional Office contacts are available to provide additional guidance on the APD process.

Submission of State Plan Amendments

States will need to submit a State plan amendment (SPAs) to provide a statement of compliance with this prohibition on payments to any financial institution or entity located outside of the U.S. for any items or services provided under the State plan or under a waiver. If a State already has State plan language related to payments to financial institutions or entities located outside of the U.S., the State must update that language to comply with this law. Enclosure A is a draft Medicaid State Plan Preprint which States may use to assure compliance with and implementation of section 6505. States must submit the Transmittal and Notice of Approval of State Plan Material, form CMS -179, with the draft template for the SPA, to CMS for review and approval. Unless the Secretary determines that State legislation is required in order to comply with this provision, States shall submit a SPA no later than June 30, 2011, with an effective date of June 1, 2011.

In accordance with section 6508, General Effective Date, under Title VI, Subtitle F of the Affordable Care Act, a State plan for medical assistance under Title XIX of the Act determined to require legislation, other than legislation appropriating funds, shall not be regarded as failing to comply before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of the Affordable Care Act. For example, if the next regular legislative session beginning after March 23, 2010, is January 1, 2011, through May 31, 2011, then the State would have to submit a SPA to ensure compliance by July 1, 2011. In the case of a State that has a two-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature. For example, if a State legislature is in session from January 1, 2011 through December 31, 2012, then the State must submit a SPA to ensure compliance by January 1, 2012. Please contact your CMS Regional Office (RO) as soon as possible if you believe that State legislation is required to implement this provision.

Please contact Mr. Rick Friedman, Director, Division of State Systems, of my staff, at 410-786-4451, or Richard.Friedman@cms.hhs.gov if you have any questions. We look forward to continuing our work together as we implement this important provision of the Affordable Care Act.

Sincerely,

/s/

Cindy Mann
Director

Enclosure

cc:

CMS Regional Administrators

CMS Associate Regional Administrators
Division of Medicaid and Children's Health

Andrew Allison
President
National Association of Medicaid Directors

Alan R. Weil, J.D., M.P.P.
Executive Director
National Academy for State Health Policy

Matt Salo
Director of Health Legislation
National Governors Association

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Rick Fenton
Acting Director
Health Services Division
American Public Human Services Association

Christine Evans, M.P.H.
Director, Government Relations
Association of State and Territorial Health Officials

Debra Miller
Director for Health Policy
Council of State Governments

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

ENCLOSURE A

DRAFT – Medicaid State Plan Preprint – DRAFT

State/ Territory: _____

PROPOSED SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.44 Medicaid Prohibition on Payments to Institutions or Entities Located Outside of the United States

Citation

Section 1902(a)(80) of the Social Security Act, P.L. 111-148 (Section 6505)

_____ The State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States.

TN No. _____
Supersedes
TN No. _____

Approval Date: _____

Effective Date: _____