DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-15
Baltimore, Maryland 21244-1850

Center for Medicaid and State Operations

SMDL #03-004

April 8, 2003

Dear State Medicaid Director:

The purpose of this letter is to: (1) clarify CMS policy with respect to state recoupment of Medicaid payments a state has made to a provider for services rendered to a Medicare/Medicaid dual-eligible beneficiary; and (2) remind states of a provider's obligation to submit timely a demand bill. Because the guidance on recoupment of Medicaid payments contained in the December 3, 1999, State Medicaid Director (SMD) letter is being clarified herein, that letter is hereby rescinded.

State Recoupment of Medicaid Payments

Medicaid is usually the payer of last resort. Except for certain statutory exclusions, you are required to "cost avoid" claims, rejecting those that may be payable by a third party. If probable third party liability is not established or benefits are not available from a third party, you must pay the claim if the services are covered by Medicaid. If the Medicaid agency learns of the existence of a liable third party after a claim is paid, or benefits become available from a third party after the claim is paid, you must seek recovery from that third party.

When that third party is Medicare, neither the Medicare nor Medicaid statute, nor HHS's regulations or policies prohibit any state from recouping its Medicaid payment from providers in the situations where: (1) Medicare has determined that it is liable for the service at issue; or (2) a beneficiary, beneficiary representative, or state (as the beneficiary's subrogee) timely requests the provider to file a claim with Medicare and the provider fails to submit timely a complete claim to Medicare for the service at issue, and/or fails to submit such documentation (including medical records) that the provider has or should have in order for the intermediary to make a substantive coverage determination on the claim for such service. By "submit timely" we mean within the Medicare timely filing limits set forth in 42 CFR §424.44, or, where applicable, within such period as extended under §424.45. By "claim" we mean a submission that is processable, i.e., one that meets the requirements of a Medicare claim as defined in 42 CFR §424.32(a). By "timely requests" we mean within a reasonable time prior to the expiration of the Medicare timely filing period contained in 42 CFR §424.44(a).

Provider Obligation to Submit Demand Bills

As noted above, the State Medicaid agency may be the subrogee of a beneficiary. As such, a state may request the provider to submit a claim for Medicare payment and the provider must honor that request. Under Medicare policy, if a beneficiary, the beneficiary's representative or (in the case of the dual eligibles) a state as the beneficiary's subrogee, timely requests a provider to file a claim for services rendered to the beneficiary, the provider is obligated to submit such a "demand bill" to the appropriate intermediary. Under section 1866(a)(1)(A) of the Social Security Act and regulation 42 CFR §489.21(b), a provider agrees not to charge a beneficiary (or the State as the beneficiary's

subrogee) for services for which a provider failed to file timely a claim with Medicare despite being timely requested to do so. Thus, if a provider fails to submit timely a demand bill, the provider violates its provider agreement with Medicare if it charges the beneficiary (or the beneficiary's subrogee), or retains any charge already collected from the beneficiary or subrogee, for such services.

Sincerely,

/s/

Dennis G. Smith
Director

cc:
CMS Regional Administrators

CMS Associate Regional Administrators
for Medicaid and State Operations

Michele Mickey
Acting 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

Brent Ewig
Senior Director, Access Policy
Association of State and Territorial Health Officials

Jim Frogue
Acting Director, Health and Human Services Task Force
American Legislative Exchange Council

Trudi Matthews
Senior Health Policy Analyst
Council of State Governments

Chuck Grim
Interim Director
Indian Health Service

J. T. Petherick
Director, Legislative Affairs
National Indian Health Board

Jacqueline Johnson
Executive Director
National Congress on American Indians

Beverly Russell
Executive Director
National Council on Urban Indian Health