



July 13, 2007

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Via Hand Delivery

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Attention: **CMS-2258--FC**

Dear Administrator Norwalk:

The Association of American Medical Colleges (AAMC) welcomes this opportunity to provide additional comments on the Centers for Medicare & Medicaid Services' (CMS or the Agency) final rule with comment period entitled "*Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions to Ensure the Integrity of Federal-State Financial Partnership.*" 72 Fed. Reg. 29748 (May 29, 2007). The Association represents nearly 300 general acute nonfederal major teaching hospitals and health systems. The Association also represents all 125 accredited U.S. allopathic medical schools; 94 professional and academic societies; 90,000 full-time clinical faculty; and the nation's medical students and residents.

As requested in the final rule preamble, we are limiting our comments to the definition of "unit of government" contained in the final rule under 42 C.F.R. §433.50. At the outset, we would like to emphasize that pursuant to the Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (Pub. Law 110-28) CMS is prohibited from implementing a final rule until May 25, 2008. We believe this moratorium precludes CMS from collecting or reviewing comments on the May 29, 2007 rule. However, out of an abundance of caution we are submitting these comments now.

STATE UNIVERSITY TEACHING HOSPITALS

The final rule with comment period clarifies that state university teaching hospitals should be viewed as units of government for purposes of sharing in the financing of the non-Federal portion of Medicaid expenditures. Specifically, the May 29 rule proposes the following regulatory language under 422 C.F.R. §433.50(a)(1)(ii)(C):

“The health care provider receives appropriated funding as a State university teaching hospital providing supervised teaching experiences to graduate medical school interns and residents enrolled in a State university in the State.”

A. The Regulatory Definition of “State University Teaching Hospital” Should Be Modified

We appreciate CMS specifically addressing state university teaching hospitals in the regulatory language. However, we believe the definition of these entities must be modified.

First, because they have graduated from medical schools, residents may or may not be “enrolled” in the state university. In fact, we are aware of only a few instances in which the residents are enrolled as students in the university. Residents and residency programs are generally delineated by “sponsorship,” that is, what entity sponsors the residency program as defined by the accrediting body. Residency programs generally are sponsored by either a teaching hospital or a medical school. We believe the issue of enrollment can be excluded from the definition without altering Agency intent.

Second, many state university teaching hospitals receive appropriated funding through a general university appropriation. While we believe the current regulatory language encompasses such situations, it would be helpful to add language such as “receives appropriated funding, *either directly or through the university . . .*”

Finally, while most, if not all, state university teaching hospitals provide medical educational experiences to graduates from medical schools, known as “residents” or “physician residents,” there may exist now, or in the future, state university teaching hospitals that educate only medical students. Consequently, we believe the definition should be modified to reflect such situations.

In sum, we believe that the regulatory provision should be modified to say:

“The health care provider receives appropriated funding, either directly or through the university, as a State university teaching hospital providing supervised teaching experiences to medical school students or graduates of medical schools who participate in graduate medical education programs as residents or fellows.”

B. State University Teaching Hospitals May Be Units of Government Without Receiving Appropriations

Not all state university teaching hospitals receive appropriations. Some of these institutions have organizational arrangements such that they do not receive state appropriations but are

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nonetheless considered governmental under state law. We believe these entities should also be considered “units of government” for Medicaid purposes.

OTHER “UNITS OF GOVERNMENT”

We believe CMS should reconsider other aspects of its “unit of government” definition. While we appreciate the addition of the phrase “has direct access to tax revenues,” we do not believe this modification will significantly increase the number of health care providers that will be considered governmental. The definition contained in the May 29 rule will still exclude many public and other hospitals that are clearly governmental under state law but that do not have direct access to tax revenues or otherwise meet CMS’s additional criteria.

Like the proposed rule, the May 29 rule runs counter to the trend of states and their associated hospitals to identify ways that maintain important state-provider relationships while allowing such providers to pursue enhanced efficiencies that are unobtainable under traditional state relationships. By reorganizing the governance structures, a number of public teaching hospitals have been given the autonomy and flexibility to implement efficiency and cost-containment measures that yield hospital and program savings, and often result in improved access and higher quality care for patients.

We urge the Agency to reconsider its definition of “unit of government” so that these important safety net providers are included.

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If you have questions concerning these comments, please do not hesitate to contact me or Karen Fisher, Senior Associate Vice President. We both may be reached at (202) 828-0490.

Sincerely,

/s/

Robert M. Dickler

Senior Vice President

Division of Health Care Affairs