DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Center for Medicaid and State Operations/Survey & Certification Group

Ref: S&C-09-03

DATE: **October 3, 2008**

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Enforcement of Section 506, Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA), Acceptance of Medicare-like Rates

Memorandum Summary

- Section 506 of the MMA requires hospitals and critical access hospitals (CAHs) to accept Medicare-like rates when providing care to individuals who are beneficiaries of Indian Health Service (IHS), Tribal health, and urban Indian health programs. 42 CFR 489.29 implements the statutory requirement.
- Hospitals and CAHs may not refuse service to an individual based on the fact that payment for the service would be authorized under one of these programs.
- Enforcement of Section 506 responsibilities is handled by CMS Regional Offices, not SAs. However, SAs should be aware of the Section 506 obligations of hospitals and CAHs.

The Centers for Medicare & Medicaid Services (CMS) adopted regulations at 42 CFR 489.29 to implement the statutory provisions of Section 506 of the MMA. These regulations articulate special requirements concerning beneficiaries who are served by the Indian Health Service, Tribal health organizations, and urban Indian organization health programs. Specifically, the regulations require:

1) Medicare-participating hospitals and CAHs must accept rates that do not exceed Medicare's rates as payment in full when payment is made by one of the following programs:
   a) A contract health service (CHS) program under 42 CFR part 136, subpart C, of the Indian Health Service (IHS);
   b) A CHS program under 42 CFR part 136, subpart C, carried out by an Indian Tribe or Tribal organization pursuant to the Indian Self-Determination and Education Assistance Act; and
   c) A program funded through a grant or contract by the IHS and operated by an urban Indian organization under which items and services are purchased for an eligible urban Indian (as those terms are defined in 25 U.S.C. 1603 (f) and (h)).

2) Hospitals and CAHs may not refuse service to an individual on the basis that the payment for such service is authorized under one of the above programs.
   a) Generally the individual will present a written approval from the IHS or CHS of payment to the hospital or CAH prior to delivery of the service. In some limited cases it is possible for the individual to obtain an after-the-fact authorization.
   b) Hospitals and CAHs are not required under §489.29 to provide service to an individual who does not present an approval for payment from IHS or a Tribal CHS program.
      i) ***EMTALA Exception:*** Hospitals and CAHs are required under §1867 of the Social Security Act and the implementing regulations at 42 CFR 489.24 to provide an appropriate medical screening examination and, if an emergency medical condition is determined to exist, stabilizing treatment or an appropriate transfer to any individual who "comes to the emergency department" (as this term is defined at 42 CFR 489.24(b)), regardless of that individual's ability to pay for the service. This includes individuals who are beneficiaries of IHS or CHS programs, regardless of whether they have an approval for payment to the hospital or CAH from IHS/CHS.

42 CFR 489.53(a)(1) allows for termination of Medicare-certified facilities for failure to comply with the provisions of the Medicare provider agreement, including the provisions at §489.29.

Enforcement of Section 506 responsibilities is handled by CMS Regional Offices, not SAs. However, SAs should be aware of the Section 506 obligations of hospitals and CAHs.

Questions about this guidance should be directed to David Eddinger at david.eddinger@cms.hhs.gov

/s/
Thomas E. Hamilton

cc: Regional Office Survey and Certification Management