

Centers for Medicaid and State Operations

March 31, 2006

SMDL #06-009

Dear State Medicaid Director:

This is one of a series of letters designed to provide guidance to States on the implementation of the provisions of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109-171), signed by President Bush on February 8, 2006. Section 6083 of the DRA amends section 1902(a) of the Social Security Act (the Act) by adding a new section 1902(a)(70) that provides States the authority to establish, under the State plan, a non-emergency medical transportation (NEMT) brokerage program. Under such a program, the State contracts with one or more brokers to manage the provision of NEMT services for beneficiaries who need transportation to or from medical providers.

States are required in their Title XIX State plans to ensure necessary transportation of Medicaid beneficiaries to and from providers (42 CFR 431.53). Expenditures for transportation may be claimed as administrative costs of the State plan. Or the State may elect to include transportation as medical assistance under its State Medicaid plan, but use a direct vendor payment system consistent with applicable regulations (42 CFR 440.170(b)).

Prior to enactment of this legislation, when a State elected to provide transportation as medical assistance under its State plan, the State needed to receive a waiver under section 1915(b) of the Act of certain requirements of section 1902(a) of the Act in order to institute a NEMT brokerage program. These waivers allowed States to restrict freedom of choice of providers, selectively contract with brokers, and operate their programs differently in different areas of the State.

The law has now been changed. States are no longer required to obtain a section 1915(b) waiver in order to provide NEMT as an optional medical service through a contracted broker. Under new section 1902(a)(70), a State may now use a NEMT brokerage program when providing transportation as medical assistance under the State plan. Brokerage programs may include wheelchair vans, taxis, stretcher cars, transit passes and tickets, and other transportation methods.

NEMT brokerage programs must be cost-effective in order to comply with section 1902(a)(70), and States must select NEMT brokers through a competitive procurement process. Competitive procurement processes for grants are described in 45 CFR Part 92.36(b)-(f). Cost-effectiveness may be determined through the cost or price analysis conducted as part of the competitive procurement. The NEMT brokerage contract must provide that the broker will have in place oversight procedures to monitor beneficiary access and complaints; that transport personnel are licensed, qualified, competent, and courteous; and that the broker will comply with the requirements related to prohibitions on referrals and conflict of interest, as defined in section 1877 of the Act. Additionally, States must

perform regular auditing and oversight of the brokerage program in order to assure the quality of the transportation services provided to beneficiaries, and to guarantee the adequacy of beneficiary access to medical care and services.

To establish a cost-effective NEMT brokerage program for providing transportation as medical assistance, a State must submit a State plan amendment (SPA) that elects this option and assures that applicable requirements related to cost-effectiveness, competitive procurement, oversight and quality are being met.

To assist States, we have attached a preprint that may be used when submitting a SPA to implement this provision. Both an electronic copy and a hard copy of the SPA must be submitted simultaneously to the CMS Central Office, and to the Regional Office serving your State. Additionally, States are required to include documentation proving cost effectiveness, and contracts with transportation brokers must be approved by CMS.

At the earliest possible date following the release of this letter, CMS will arrange State training on these new provisions, if requested. Should you have any questions regarding this new legislation or the submission of a SPA to implement an NEMT brokerage program, please contact Ms. Jean Sheil, Director, Family and Children's Health Program Group, at 410-786-5647.

Sincerely,

/s/

Dennis G. Smith
Director

Enclosure

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cc:

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