ACAP
Association for Community Affiliated Plans

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Bob Thompson, Chairman | Margaret A. Murray, Chief Executive Officer

February 4, 2011

Cindy Mann
Director
Centers for Medicaid, CHIP, and Survey & Certification
The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
Sent via email

Dear Ms. Mann,

We are writing to express our concern regarding implementation of the Medicaid drug rebate provisions in Section 2501(c) of the *Affordable Care Act (ACA).* Despite an effective date of March 23, 2010, many states have yet to take the necessary steps to update the rates paid to health plans based on plans' actual experience with manufacturer rebates.

We appreciate that your April 22, 2010 Letter to State Medicaid Directors regarding the ACA's drug rebate changes noted that Medicaid managed care organizations' (MCOs) capitation rates must be based on actual cost experience related to rebates and are subject to Federal regulations regarding actuarial soundness of capitation payments. Consistent with the concerns raised in the Government Accountability Office's August 2010 report on CMS oversight of states' Medicaid managed care rate setting, CMCS needs to ensure that all states' rate setting complies with all of the regulatory actuarial soundness requirements. Because many states have not done so to date, we are requesting that CMCS both expound upon its guidance and take steps to monitor states' compliance with the actuarial soundness requirements.

CMCS and states must recognize that manufacturers are generally not willing to provide rebates to plans given that they are required to send the enhanced rebates for MCO enrollees to states as of April 1, 2010. Thus a number of manufacturers have ended or significantly reduced the rebates being paid to Medicaid managed care organizations, either directly or through contracts held with the MCO's Pharmacy Benefit Manager (PBM).

The lost rebates result in a real time decrease in plans' revenues. This has a disproportionate impact on ACAP member safety net health plans as they, by definition, are community-based, nonprofits that are not able to "make up" the lost revenues in other lines of business. ACAP is working to collect more complete data from our member plans. However, as an illustrative example, in one state alone, California, several safety net health plans have reported to the state agency over $5.4 million in lost revenue due to changes in manufacturers' rebates.

We ask that CMCS ensure states are working with plans in a timely manner to obtain the necessary data and take available information into consideration to make adjustments to the 2010 year rates and, to prospectively adopt an actuarially sound approach for determining the rates beginning for contract year 2011 that addresses the issue of lost pharmaceutical rebates. Going forward, when CMCS approves states' actuarial soundness methodologies, we ask that you ensure reimbursement mechanisms appropriately reflect reductions in drug manufacture rebates to plans.

ACAP and its members have worked for several years to change the treatment of drug rebates for Medicaid managed care enrollees because it will improve patient care and the ability of health plans to manage pharmacy benefits. We were strong supporters of including the provisions in the ACA, the savings from which were used to offset the cost of the Medicaid expansion. We want to ensure that the rebate provisions are implemented appropriately to realize the fullest extent of its intended benefits and do not inadvertently hurt the very health plans that championed it. Please do not hesitate to contact me to discuss how we can be of further assistance to you on this and other pressing issues related to Medicaid managed care.

Sincerely,

Margaret A. Murray
Chief Executive Officer