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Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2198-P
P.O. Box 8010
Baltimore, MD 21244-1850

The National State Auditors Association (NSAA) is pleased to provide the following comments in response to the proposed regulations implementing section 1001(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) which establishes new reporting and auditing requirements for state Disproportionate Share Hospital (DSH) payments.

Apparent circumvention of Single Audit Act

We are unclear about how the proposed certified independent audit of the state's DSH payments would impact a state's Single Audit. The proposed rules appear to require a separate audit, especially since there is no reference to the Single Audit Act. This seems to be an obvious circumvention of the act. We believe these audit requirements should be included in the existing framework for audits of federal programs under the Single Audit Act and include the five items requiring verification in the OMB Circular A-133 Compliance Supplement. Specifically, we believe the most practical and effective manner for these proposed requirements to be met is to:

1. Require hospitals to expand their current financial audits to include the appropriate hospital-related compliance issues.
2. Revise OMB Circular A-133 Compliance Supplement to require the state Medicaid program's auditor test this reporting requirement by ensuring the Medicaid program received the information and audit assurances from the hospitals, accumulated the information, and properly reported the results to the Centers for Medicare and Medicaid Services.

Clarification needed if separate audit requirements remain

1. The proposed rule defines an independent audit as one conducted in accordance with *Government Auditing Standards*. However, it is not clear whether this audit is intended to follow the financial audit standards or attestation engagement standards of *Government Audit Standards*. Further, if attestation standards are to be used, the regulations need to describe whether auditors are expected to follow the examination, review, or agreed-upon procedures type of engagement. Obviously the objectives of each of these four possible audits, and the resultant reports will yield quite different scopes and results. CMS should add the necessary guidance to make explicit which of the *Government Auditing Standards* should be used here.
2. The proposed rule does not specify, and there seems to be much confusion over, who is responsible for obtaining the independent audit and ensuring the requirements are met. From our perspective, there are several possible alternatives for performing this function. For example, it could be presumed that these audit requirements are the responsibility of the state's auditor, the state Medicaid program's auditor, the Medicaid agency's staff or their agent, or the hospital's auditor. Therefore, the guidance in the proposed regulation should be clarified.

3. We also believe there are several impediments to ensuring that this proposed audit requirement is met.
 - a) It appears that verifying each hospital's proper treatment of uncompensated care costs can only be accomplished by the auditor performing audit procedures at **each** hospital. At best, this means in some states, dozens or more hospitals will have to be audited for compliance with this requirement. At worst, hospitals will not be cooperative. In addition, state auditors may not have jurisdiction to audit private hospitals.
 - b) The extent of testing is not established by this rule, and without such clarification, will most certainly result in inconsistent and inadequate audit coverage.
 - c) It is not clear if audit procedures applied in any other audits the hospital has undergone would be sufficient to rely upon in this verification.CMS should revise the proposed rule to clearly describe the level of verification expected (i.e., the extent of audit procedures).

4. We are concerned about the timing of this audit requirement. Our understanding is that the proposed rules will require the audit work to be as of the end of state fiscal year 2005. Given that the fiscal year is already over, the proposed rules are not yet in effect, and the significant number of entities (hospitals, states, auditors) impacted, it will be very difficult, or near to impossible, to meet the requirement as of the end of the year.

We appreciate the opportunity to provide our comments. Should you have any questions or need additional information regarding our response, please contact Sherri Rowland of NSAA at (859) 276-1147 or me at (801) 538-1360.

Sincerely,

A handwritten signature in cursive script that reads "Auston G. Johnson". The signature is written in black ink and is positioned above the typed name and title.

Auston G. Johnson
President, NSAA