

December 29, 2009

The Honorable Harry Reid  
Majority Leader, U.S. Senate

The Honorable Nancy Pelosi  
Speaker, U.S. House of Representatives

The Honorable Max Baucus  
Chairman, Senate Finance Committee

The Honorable Tom Harkin  
Chairman, Senate HELP Committee

The Honorable Henry Waxman  
Chairman, House Energy and Commerce Committee

The Honorable Charles Rangel  
Chairman, House Ways and Means Committee

The Honorable George Miller  
Chairman, House Education and Labor Committee

***Sent Via Email***

Madam Speaker, Mr. Majority Leader, and Chairmen:

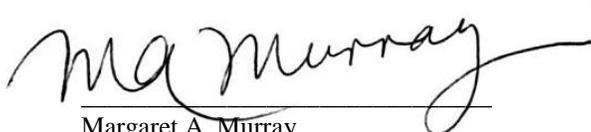
The Association for Community Affiliated Plans (ACAP) and the Medicaid Health Plans of America (MHPA) are writing to compliment you on your success in passing comprehensive health reform legislation through the House and Senate. We applaud this historic accomplishment in an effort to provide a pathway for universal health coverage for all Americans.

Together, ACAP and MHPA represent 59 health plans serving 20 million Medicaid beneficiaries in 37 states. Although each of our organizations will be writing you separately with regard to our individual positions on various issues in the House and Senate legislation, this letter expresses our strong support for Section 2501(c) of the Senate legislation and Section 1743 of the House legislation that would equalize the treatment of the Medicaid drug rebate program for Medicaid beneficiaries that receive their benefits through the traditional fee-for-service program and through coordinated care health plans. This legislation will not only provide significant savings to Federal and State budgets, it will also move toward protecting beneficiaries enrolled in health plans to ensure that the management of prescription drug benefits are not removed from the comprehensive health strategy provided by coordinated care plans. We appreciate the House and Senate's support of this policy.

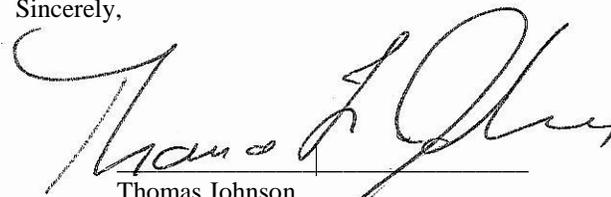
Attached are ACAP's and MHPA's recommendations regarding merging these two provisions in conference. We hope that they are helpful as you move forward in reconciling the differences between the House and the Senate bills.

As always, please do not hesitate to contact us if we can be of any assistance to you. You can reach Ms. Murray at (202) 204-7509 or Mr. Johnson at (202) 857-5720.

Sincerely,



Margaret A. Murray  
Chief Executive Officer



Thomas Johnson  
Chief Executive Officer

**Recommendations to House/Senate Conferees for Provisions related to the Equalization of the Medicaid Drug Rebate Program for Medicaid Fee-for-Service and Medicaid Managed Care**

**Retain House and Senate Provisions to Equalize the Medicaid Drug Rebate for Medicaid Managed Care Organizations (Section 2501(c) of the Senate; Section 1743 of the House)**

ACAP and MHPA applaud the House's and Senate's inclusion of provisions that would equalize the treatment of health plans and the fee-for-service program under the Medicaid drug rebate program. For the most part, these provisions will eliminate incentives for states to remove the management of prescription drugs away from health plans and back into fee-for-service solely for the purpose of obtaining the savings that come from the acquisition of prescription drugs under the federal rebate program.

**Recommendations:** ACAP and MHPA strongly support the inclusion of these provisions in the final conference agreement and urges conferees to retain the following language from Section 1743 of the House Bill and Section 2501(c) of the Senate Bill:

- **Implementation Date (Section 1743(c) of the House bill):** ACAP and MHPA urge conferees to retain the House implementation date of January 1, 2010. This will not only improve the savings associated with the provision, but will also act to alleviate the pressure that some states are under to carve out prescription drugs for budget-related reasons.
- **Provisions related to Actuarial Soundness (Section 2501(c)(1)(C) of the Senate bill):** The Senate includes protections to ensure that Medicaid health plans are reimbursed consistent with federal actuarial soundness requirements first implemented under the *Balanced Budget Act of 1997* [new paragraph (xiii)(II)]. Actuarial soundness ensures that health plans are adequately reimbursed by the states for, in this instance, the cost of prescription drugs provided to health plan enrollees. Currently, some states are disregarding actuarial soundness and reimbursing health plans under the assumption that they are acquiring drugs at the federal drug rebate costs, despite the fact that the health plans' cost of drug acquisition is significantly higher.

For this reason, we request that the Senate actuarial soundness language in (c)(1)(C) be changed from '(II) capitation rates paid to the entity shall be based on actual cost experience related to rebates and subject to the Federal regulations requiring actuarially sound rates,' to '(II) capitation rates paid to the entity shall be based on actual MCO rebate experience and subject to the Federal regulations requiring actuarially sound rates, and in instances where the state uses a percentage of fee for service equivalent calculation to set the upper bound on the capitation rates, the fee for service equivalent costs should be calculated based on drug costs prior to reductions for state pharmacy rebates,'.

The actuarial soundness provisions are necessary to protect access to services and we strongly urge the Senate provisions be retained with the amended language provided here.

- **Protections for 340B Providers (Section 2501(c)(2)(B) of the Senate bill):** Section 340B of the Public Health Service Act provides discounts on drugs provided by certain providers to the uninsured populations they serve. Many of these providers – including community health centers and public hospitals – are important partners with Medicaid health plans. Both the House and Senate deliver protections for 340B providers under the Medicaid drug rebate program and ACAP and MHPA strongly support the retention of these protections.

- **Provisions related to Drug Formularies:**

ACAP and MHPA supports provisions related to drug formularies that were included in Section 1651(c)(2)(A) of S.1796 as passed by the Senate Finance Committee. ACAP and MHPA believe that the provisions in S.1796 that would apply the same requirements on health plans that currently exist on the prescription drug benefit in the Medicaid fee-for-service program actually strengthen the regulation of health plan formularies and adds a new layer of beneficiary protection. Furthermore, CBO estimates for cost savings from an expansion of the federal drug rebate to Medicaid managed care organizations assumed a continuation of the cost management benefits to the Medicaid program that are currently derived from the ability of plans to manage their own formularies. We urge the conferees to include provisions related to Medicaid drug formularies that were passed by the Finance Committee in Section 1651(c)(2)(A) of S.1796.

- **Provisions related to the Federal Clawback:** The Senate and House include language directing the Secretary to reduce payments to states in the amount of the state share for those rebates attributable to the increase in the minimum rebate percentage made by subsections (a)(1), (b), and (d) of section 2501 in H.R. 3590 and section 1742(b)(1) of H.R. 3962. These provisions would require the Secretary to recoup 100 percent of rebates attributable to the increased minimum rebates on drugs paid for by MCOs as well. While Congressional intent limits the ‘clawback’ to those amounts based on the increase in the minimum rebate, language in both bills should be clarified to prevent any misinterpretation that the Secretary shall retain all MCO rebates.

We urge the conferees to clarify this language by adding the following language to the end of subsection (c) of section 2501 and section 1743: *"Nothing in this subsection shall be interpreted to require states to return to the Secretary any savings other than the difference between the minimum rebate percentage effective on December 31, 2009 and the minimum percentage effective under section 2501 (a)(1), (b), and (d)."*

- **State Reports on Rebates for MMCO Drugs:** ACAP and MHPA support the provision requiring states to report those rebates received from pharmacy manufacturers for drugs provided to individuals enrolled with Medicaid managed care organizations that were included in Section 1743(b)(2) of H.R. 3692. ACAP and MHPA believe that this provision would increase the transparency of the federal drug rebate program and ensure clarity for states, health plans and the federal government as the federal rebates program is expanded to Medicaid managed care organizations.

We ask the conferees to include this following language, as modified from language included in S. 547, in the final package: *"Reporting on MMCO drugs. – Each State shall report to the Secretary on a quarterly basis the total amount of rebates in dollars received from pharmacy manufacturers for both brand name and generic drugs provided to individuals enrolled with Medicaid managed care organizations that contract under section 1903(m) and such other information as the Secretary may require to carry out paragraph (1)(C) with respect to such rebates. The Secretary shall review the reports submitted by States under this subsection and, after such review, make the aggregate data contained in such reports publicly available."*