

**Modifications to Titles II – V of the Chairman’s Mark
“The American Recovery and Reinvestment Act of 2009”**

January 27, 2009

To correct drafting error in Title II, Subtitle A: Special Transfers in Fiscal Year 2009 for Administration

On page 11 of the Mark:

- Strike the last two sentences of the second paragraph under “Special Transfers in Fiscal Year 2009 for Administration”

To correct drafting errors in Title III, Subtitle D, Consultation on Medicaid, CHIP and Other Health Care Programs Funded Under the Social Security Act Involving Indian Health Programs and Urban Indian Organizations

On page 26 of the Mark:

- Strike the title of the section
- Replace with “Tribal Technical Advisory Group; State Solicitation of Advice on Medicaid and CHIP”

- Strike all references to “Urban Indian Organizations” and/or “UIOs”
- Replace with references to “national urban Indian health organizations” and/or “NUIHOs”

- Strike the third sentence in the description of the Chairman’s Mark
- Replace with “For the purposes of the TAG, the inclusion of a national urban Indian health organization does not trigger the Federal Advisory Committee Act (FACA).”

To correct drafting error in Title III, Subtitle D: Application of Prompt Pay Requirement to Nursing Facilities

On page 28 of the Mark:

- Strike “skilled” from the first line of the description of the Chairman’s Mark

To correct drafting errors in Title V: Temporary Federal Medical Assistance Percentages (FMAP) Increase.

On page 44 of the Mark:

- Strike “5.5” on line three of the third paragraph
- Replace with “5.6”
- Make corresponding changes in the subsequent example on lines four through eight

To correct drafting error in Title V, Temporary Federal Medical Assistance Percentage (FMAP) Increase

On page 45 of the Mark:

- Strike the sentence starting at the end of line four of the last paragraph
- Replace with the following: “Any reimbursement made for services provided to individuals eligible for medical assistance, who were not eligible for medical assistance under a state’s income eligibility standards, or eligibility standards enacted in a state law to submit a state plan amendment, as of July 1, 2008, will not be made at the recession adjustment period increased FMAP rate.”

To Accept with Modification Rockefeller-Stabenow-Bingaman-Carper Amendment #3:

Add a new section to **Title V, Requiring state accountability for federal Medicaid relief.**

This section would require states to report to the Secretary of Health and Human Services detailing how the federal Medicaid relief funds distributed under this title were expended. Such reports shall be made in such manner as the Secretary shall determine, and shall be submitted no later than nine months after the end of the recession adjustment period.

This section would also require a GAO study and report on the most recent economic downturn and recommendations for addressing the needs of states during future periods of national economic downturn. Specifically, the Comptroller General would be required to analyze previous periods of national economic downturn in the last 35 years, as well as the current such period, and the past and projected effects of temporary increases in FMAP under Medicaid with respect to such periods.

Not later than April 1, 2011, the Comptroller General shall submit a report to the relevant Committees of Congress on the results of the analysis conducted. Such report shall include recommendations for modifying the national economic downturn assistance (*i.e.*, countercyclical FMAP) formula called for in the GAO-07-97 report to improve the effectiveness of the application of such percentage in addressing the needs of states during periods of national economic downturn, including recommendations for 1) improvements to the factors that begin and end the application of such percentage; 2) how the determination of such percentage could be adjusted to address state and regional economic variations during such periods; 3) how the

determination of such percentage could be adjusted to be more responsive to actual Medicaid costs incurred by states during such periods, including an examination of the impact on states of declining private coverage, declining state revenue, and caseload maintenance and growth; and 4) the effects of any other specific economic indicators that the Comptroller General deems appropriate.

To Accept with Modification Rockefeller Amendment #9:

Add a new section to **Title IV** to require the Secretary of HHS – in consultation with the Undersecretary for Health of the U.S. Department of Veterans Affairs; the Director of the Indian Health Service; the Secretary of the U.S. Department of Defense; the Director of the Agency for Healthcare Research and Quality; the Administrator of the Health Resources and Services Administration; and the Chairman of the Federal Communications Commission – to issue a report not later than October 1, 2010 on: 1) the current availability of open source health information technology systems to federal safety net providers (including small, rural providers); 2) the total cost of ownership of such systems in comparison to proprietary commercial products available; 3) the ability of such open source systems to respond to the needs of and applications to various populations (including children and the disabled); and 4) the capacity of open source systems in facilitating interoperability. Such study shall take into account the circumstances of smaller providers, providers located in rural or other medically underserved areas, and safety net providers that deliver a significant level of health care to uninsured, Medicaid, CHIP, and other vulnerable patients.

To Accept Schumer, Roberts, Wyden, Stabenow Amendment #45:

To add a provision to reverse the phase-out of the Medicare hospital indirect medical education (IME) adjustment factor as of October 1, 2008.

To Accept with Modification Grassley Amendment #21:

Amend **Title III, Subtitle A** to provide a “special enrollment right” for assistance-eligible individuals to allow them to change coverage options upon electing COBRA. The assistance-eligible individual could only request special enrollment in a plan offered to employed workers that provides the same or lower health insurance premiums than the individual’s previous coverage option. A “plan” for these purposes would not include: a plan providing only dental, vision, counseling, or referral services (or a combination of the foregoing); a health flexible spending account or health reimbursement arrangement; or coverage for treatment that is furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination of such care).

To Accept Grassley Amendment #24:

Amend **Title III, Subtitle A** to provide employers adequate time to administer the COBRA subsidy by requiring that the subsidy not go into effect until the first day of the first month that begins 30 days after the date of enactment.

To Accept with Modification Grassley Amendment #39:

Add a new section to **Title V, Funding for the Department of Health and Human Services Office of the Inspector General**. This section would provide \$25 million a year for the length of the recession adjustment period to the Department of Health and Human Services Office of the Inspector General for its work to ensure Medicaid funds are properly spent.

To Accept with Modification Grassley Amendment #40:

Amend **Title IV** to require the Secretary to design and implement a detailed strategy to assure no duplication of incentive payments to eligible providers for participation in Medicare and Medicaid health IT initiatives. The Secretary shall detail and publish this strategy as part of the required rulemaking prior to implementation of health IT initiatives. Additionally, the Secretary shall report to Congress by July 1, 2012 on the results of the strategy to date.

To Accept with Modification Hatch Amendment #24:

Add a new provision to **Title IV** to require the Secretary of HHS to provide assistance to eligible professionals and rural and underserved hospitals to successfully choose, implement and use electronic health records systems through, if practicable, existing entities with expertise in such goals.

To Accept with Modification Hatch Amendment #27:

Add a new provision to **Title IV** that would allow the Secretary of HHS to require that funds provided in Title IV, Subsection B, Part II for health IT be used to purchase technology manufactured in the U.S. and made with U.S. material, provided that the Secretary has determined that there is sufficient domestically-based supply to meet the goal of universal adoption of health IT.

To Accept with Modification Snowe Amendment #4:

Add a new provision to **Title V** that prevents states from receiving the increased FMAP under this title when a state is out of compliance with the prompt pay requirements of section 1902(a)(37)(A). The provision also requires states to report to the Secretary within 90 days

following the 1st day of each such month regarding the State's compliance with the prompt pay requirements of section 1902(a)(37)(A) of the Social Security Act with respect to claims made for covered items and services during the preceding month. The Secretary may waive the reporting requirement imposed under the preceding sentence, or the denial of the increased FMAP available under this title to a State, during a period in which there are exigent circumstances, including natural disasters, that prevent the submission of such a report or the timely processing of claims.