

August 16, 2004

Mr. Jim Bossenmeyer
Centers for Medicare and Medicaid Services
Center for Medicare Management
Hospital and Ambulatory Group
Department of Health and Human Services
Mail Stop C5-01-14
7500 Security Boulevard
Baltimore, MD 21244-1850

Cc: Dr. McClellan, Secretary Thompson

Re: Federal Reimbursement of Emergency Health Services Provided to Undocumented Immigrants

Dear Mr. Bossenmeyer,

On behalf of the undersigned organizations, the Community HIV/AIDS Mobilization Project (CHAMP) appreciates this opportunity to comment on the implementation of Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 ("Section 1011"), regarding federal reimbursement of emergency health care services provided to undocumented immigrants.

As organizations working with people living with, or at risk of, HIV/AIDS, we are committed to reducing barriers to HIV prevention education, counseling, testing and therapeutic treatment. Thus, we urge implementation of the Section in a way that will encourage, rather than discourage, effective utilization of health services.

The recent advent of rapid HIV testing is expected to increase the number and percentage of people in the United States who are aware of their HIV status, and creates the challenge of providing accessible services to those who are newly diagnosed.

The Center for Disease Control's Advancing HIV Prevention program has brought new attention to the important role of health care providers in the HIV education, counseling and testing process. In order to benefit from this amplified approach, individuals across the spectrum of immigration and citizenship must be able to access providers without fear.

Some commentators have recommended that the Department of Health and Human Services ("HHS") develop a process for the implementation of Section 1011 based on the reimbursement of individual or aggregated claims. Under such an approach, individual patients would be asked to declare their immigration status, or providers would make assumptions about immigration status based on an individual's possession or non-possession of certain documents, such as possession of a foreign voting card or the lack of a Social Security Number. **The undersigned organizations urge HHS to reject any approach based on identification of individual patients' immigration status, whether direct or**

indirect, and instead to adopt a “proxy” methodology that uses data to approximate providers’ costs of care to undocumented persons.

Such a methodology could use the ratio of emergency Medicaid to full-scope Medicaid patients served by a provider and apply that ratio to the providers’ overall uncompensated care costs. Asking individuals to declare or somehow prove their “undocumented” status will cause them to avoid seeking needed health care for themselves and their family members, with severe consequences for individual and public health.

Currently, there is a ban on the immigration of people living with HIV into the United States. For this additional reason, it may hamper our efforts to bring life-saving prevention and treatment information to people living with, or at risk of, HIV/AIDS if we implement measures that could deter immigrants from seeking health care because of questions about their immigration status.

In addition, a process based on individual identification is unlikely to be accurate – it is not unusual for immigrants to be confused about their immigration status. Undocumented persons, by definition, cannot present papers that demonstrate their status. The suggested alternatives, such as lack of a social security number or a foreign driver’s license, do not necessarily indicate undocumented status.

Finally, we urge HHS to develop written regulations to implement Section 1011, and to receive formal feedback on the regulations in proposed form by submitting them to the notice-and-comment process provided in the Administrative Procedure Act, 5 USC §553. The Agency’s rules implementing Section 1011 will necessarily be substantive, carrying the force and effect of law. As such, the rules are subject to the notice and comment requirements of 5 USC 553(b)(3) *American Mining Congress v. Mine Safety & Health Administration*, 995 F.2d 1106 (DC Cir 1993). The funds provided by Section 1011 will assist hospitals in providing critical emergency health care services to people who need them. If the provision is actualized in a way that discourages people with urgent health care needs, including HIV/AIDS, from seeking services, it will not serve its intended purposes and will not help us implement a range of public health tools in the fight against HIV/AIDS.

Thank you for the opportunity to submit comments. Please contact Julie Davids at 212-966-0466 x 1206 or jdavids@champnetwork.org if we can provide any additional information.

Sincerely,

Julie Davids, Executive Director

Community HIV/AIDS Mobilization Project (CHAMP), on behalf of:

The Access Project (New York, NY)

ACT UP East Bay (Oakland, CA)

African Services Committee (New York, NY)

AIDS Foundation of Chicago (Chicago, IL)

The AIDS Institute (Washington, DC)

AIDS Support Group of Cape Cod (Provincetown, MA)
American Academy of HIV Medicine (Washington, DC)
Artists for a New South Africa (ANSA, Los Angeles, CA)
Association of Maternal & Child Health Programs (Washington, DC)
Bronx AIDS Services (Bronx, NY)
California Prison Focus (San Francisco, CA)
Camino de Vida Center for HIV Services (Las Cruces, NM)
The Center for AIDS (Houston TX)
CitiWide Harm Reduction (Bronx, NY)
Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR, Denver, CO)
Community HIV/AIDS Mobilization Project (New York, NY)
Empire State Coalition of Youth and Family Services (New York, NY)
Foundation for Integrative AIDS Research (FIAR, New York, NY)
The Gay and Lesbian Dominican Empowerment Organization (GALDE, New York, NY)
Harm Reduction Project (Denver, CO & Salt Lake City, UT)
Health GAP Coalition (Philadelphia PA, New York, NY)
Heartland Health Outreach (Chicago, IL)
Howard Area Community Center (Chicago, IL)
HIV Advocacy Center of Oregon and SW Washington (Portland, OR)
Housing Works, Inc. (New York, NY)
Hyacinth AIDS Foundation (New Brunswick, NJ)
Ita Ford/Bill Kelly Jr. Health Team (New York, NY)
Kansas Chapter of National Action Network (Stockton, KS)
Lesbian, Gay, Bisexual and Transgender Community Center (New York, NY)
Lifespan/Miriam Hospital (Providence, RI)
Maine AIDS Alliance (Augusta, ME)
Mano a Mano (New York, NY)
Medical Advocates for Social Justice (Chicago, IL)
National Alliance of State and Territorial AIDS Directors (Washington DC)
National Association of People with AIDS (NAPWA-US, Washington DC)
New Mexico Poz Coalition (Albuquerque, NM)
New York City AIDS Housing Network (NYCAHN)
Our Voices (New Brunswick, NJ)
PACO/GRIP (Jersey City, NJ)
Partnership for Family Health: Northern Manhattan HIV Consortium (New York, NY)
Philadelphia House (Greenville, NC)
The River Fund (Sebastian, Florida)
San Francisco Community Clinic Consortium (San Francisco, CA)
San Luis Valley HIV/AIDS Coalition (South Fork, CO)
Search For A Cure (Boston, MA)

Members of September 11th Families for Peaceful Tomorrows (New York, NY): Colleen Kelly (co-director), Rita Lasar, Valerie Lucznikowska, Adele Welty

Siouxland Community Health Center (Sioux City, IA)

Soluciones Visuales (New York, NY)

Title II Community AIDS National Network (Washington, DC)

Together We Can, Inc. (Miami, FL)

Triad Health Project (Greensboro, NC)

The Women's Center (Bronx, NY)