



Patient Rights Under Section 1011 of the Medicare Modernization Act

June 2005

BACKGROUND

The Centers for Medicare and Medicaid Services (CMS) has issued a final implementation notice for Section 1011 of the Medicare Modernization Act of 2003 (MMA). The law provides \$250 million per year to reimburse health care providers for uncompensated medical treatment given to undocumented immigrants, persons paroled into the U.S. for medical services, or Mexican citizens with a "border crossing card."

Although providers are not required to participate in this program, if they choose to seek reimbursement under Section 1011, they are obligated to ask questions of patients who receive emergency care. Providers must collect and maintain information that determines if a treated patient qualifies the provider for funding.

To see CMS's suggested "Provider Payment Determination" form, with the entire set of questions, please go to: <http://www.cms.hhs.gov/providers/section1011/cms-10130A.pdf>

WHAT HEALTH ADVOCATES SHOULD KNOW ABOUT THIS NEW LAW:

The CMS implementation guidelines reaffirm that all individuals, regardless of immigration status, have the right to emergency health services. Under the Emergency Medical Treatment and Labor Act (EMTALA), health care providers should screen patients seeking emergency care and must provide necessary stabilization for emergency medical conditions, including delivery services for pregnant women in labor.

The Section 1011 provision is not an insurance program, but rather provides reimbursement for health care providers. Under this statute, a patient does not qualify for reimbursement and will not be relieved of debt accrued when obtaining emergency services. In addition, health care providers are not allowed to collect federal reimbursement for services covered by a patient's insurance, including public health programs such as emergency Medicaid.

To seek reimbursement, health care providers are required to ask for certain information from all patients. The information collection includes, but is not limited to, Medicaid eligibility, determining if a patient is a parolee or possesses a border crossing card, and foreign birthplace. In addition, providers must retain copies of patient documentation such as a patient's foreign ID, passport, or invalid Social Security number.

The implementation notice does not permit direct inquiries regarding whether a patient is undocumented. A letter sent to health care providers by CMS on October 1, 2004 clearly states that health care providers should not ask about a patient's citizenship status in order to receive payment under Section 1011.

Patients are not required to provide any or all of the information requested under Section 1011. Attesting to undocumented status, providing invalid documents, or documents that are not one's own, could have negative immigration or other consequences for patients. We strongly discourage patients from providing such information. However, patients who may be able to secure Medicaid or other insurance programs can

benefit from cooperating with health care providers to determine whether they are eligible for these programs. Even when applying for Medicaid, however, patients need only specify whether they have an immigration status that makes them eligible for Medicaid. Patients do not need to make admissions about their undocumented status.

Providers should avoid "singling-out" patients for questioning because of ethnicity. Under Title VI of the Civil Rights Act of 1964, patients should not be targeted based on race, color, or national origin.

CMS has stated that information collected under this program will not be used for immigration enforcement purposes. In addition, CMS has provided the following optional disclosure message that health care providers can use to notify patients about the protections afforded under Section 1011: Patients should be aware that the Department of Homeland Security will not access or use information related to medical care to initiate enforcement of United States immigration laws unrelated to an ongoing terrorism or criminal investigation. However, it is never advisable for patients to provide incriminating admissions or false documents.

If you learn that hospitals or health care providers who are participating in the Section 1011 reimbursement process are asking inappropriate questions about immigration status or have been targeting individuals for such questions based on their race or assumptions about their national origin, please contact Jon Blazer at the National Immigration Law Center, at blazer@nilc-dc.org or (202) 216-0261, ext. 4.

Legal Disclosure: The information provided in this document should not be construed as legal advice.

For more information on Section 1011 of the MMA and patient rights issues, please contact Jennifer Ng'andu at the National Council of La Raza (NCLR), at jngandu@nclr.org or (202) 776-1762.