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SMD: #18-003

RE: Rescinding SMD #16-005  
Clarifying “Free Choice of  
Provider” Requirement

January 19, 2018

Dear State Medicaid Director:

On April 19, 2016, the Center for Medicaid and CHIP Services (CMCS) and the Center for Program Integrity (CPI) issued a State Medicaid Director Letter that provided guidance to state Medicaid agencies on compliance with Section 1902(a)(23) of the Social Security Act (the “any willing provider” or “free choice of provider” provision).

We are concerned that the 2016 Letter raises legal issues under the Administrative Procedure Act, and limited states’ flexibility with regard to establishing reasonable Medicaid provider qualification standards. For these reasons, we are rescinding the April 19, 2016 Letter (SMD #16-005). States should continue to look to Section 1902(a)(23) and our regulations at 42 C.F.R. § 431.51 to determine their obligations under Section 1902(a)(23).

We may provide further guidance in the future.

Sincerely,

/s/

Brian Neale  
Director, CMCS

/s/

Alec Alexander  
Director, CPI