



DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

Center for Medicaid and State Operations
7500 Security Boulevard
Baltimore, MD 21244-1850

December 17, 1997

Dear State Medicaid Director:

This letter is one of a series that provides guidance on the implementation of the Balanced Budget Act of 1997 (BBA). These provisions were enacted to help combat waste, fraud, and abuse by those paid with Medicaid funds to provide services and supplies.

Section 4724 of the BBA amends section 1903(I) and section 1902(a) of the Social Security Act (Act) and is entitled "Elimination of Waste, Fraud and Abuse." The purpose of this letter and the attachments is to provide you with preliminary guidance on six of the provisions included in section 4724.

Each of these provisions is addressed in the attachment. However, I want to direct particular attention to two provisions concerning the new requirement for home health agencies (HHAs) and durable medical equipment (DME) suppliers to obtain surety bonds.

Sections 4724(b) and 4724(g) require HHAs and DME suppliers, respectively, to obtain surety bonds. These provisions are effective January 1, 1998, but for the initial term, States will be given until February 27, 1998 to implement these provisions. The statute ties the Medicaid surety bond requirements to those required by the BBA for Medicare HHAs and DME suppliers.

HCFA plans to issue a regulation on surety bonds for HHAs as soon as possible. This regulation will address both surety bonds required for Medicare and Medicaid and will be published as a final rule with comment period. Publication of this regulation will set in place safeguards against fraud and abuse and must be accomplished before the moratorium imposed by HCFA on certifying new Medicare HHAs is lifted. HCFA plans to issue a proposed regulation on surety bonds for DME suppliers early in calendar year 1998. This regulation will not take effect until a final rule is published following a period for public comment.

The remaining provisions of section 4724 are discussed in the first attachment. We believe that States can implement these provisions without rulemaking by or additional guidance from HCFA.

If you have any questions concerning these materials, please contact Mary Linda Morgan by phone at (410) 786-2011 or by e-mail at mmorgan1@hcfa.gov.

Sincerely,

/s/

Sally K. Richardson

Director

Center for Medicaid and State Operations

Attachments

cc: All HCFA Regional Administrators All HCFA Associate Regional Administrators for Medicaid and State Operations
Lee Partridge - American Public Welfare Association Jennifer Baxendell - National Governors' Association Joy Wilson -
National Conference of State Legislatures

ATTACHMENT

BBA-97: FRAUD & ABUSE

Ban on Spending for Non-Health Related Items (BBA 4724(a))

This provision imposes an explicit ban on the use of Federal Medicaid matching funds for non-health related items such as bridges, roads, stadiums, or other items not covered by a State's Medicaid plan. This provision is effective January 1, 1998, and you should be in compliance with this provision by that date.

Surety Bond Requirement for Home Health Agencies (HHA) (BBA 4724(b)) and Disclosure of Information and Surety Bond Requirement for Suppliers of Durable Medical Equipment (DME) (BBA 4724(g))

These sections require the State agency to obtain surety bonds from home health agencies and durable medical equipment suppliers effective January 1, 1998.

Section 4724(b) imposes a new requirement for surety bonds for HHAs. This provision prohibits payment of Federal Medicaid matching funds for home health services unless the HHA or organization provides the State Medicaid agency with a surety bond in the form required by the Medicare program and in an amount of at least \$50,000.

Section 4724(g) requires surety bonds for DME suppliers. States are prohibited from issuing or renewing provider numbers for suppliers of DME unless, on a continuing basis, the supplier provides the State Medicaid agency with a surety bond in the form required by the Medicare program and in an amount of at least \$50,000.

Also, under section 1124 of the Act, current law requires any entity (other than an individual practitioner or group of practitioners) that furnishes or arranges for Medicaid services to supply full and complete information as to the identity of each person with ownership or a control interest in the entity. The new provision extends the requirements of section 1124 to suppliers of DME for the Medicaid program. It also states that the entity must disclose ownership information for any subcontractors in which the supplier directly or indirectly has a 5% or more ownership interest. The State must have this ownership information prior to issuing or renewing provider numbers. States which do not renew DME supplier numbers should establish a process to obtain the required ownership information. This requirement is effective on January 1, 1998.

The surety bond provisions of the BBA require Medicaid to follow Medicare requirements. HCFA is currently drafting regulations to implement the Medicare requirements for surety bonds for home health agencies and DME suppliers. The regulation for home health agency surety bonds is expected to be published shortly as a final rule. This regulation will address the application of Medicare requirements to Medicaid. The regulation for surety bonds for DME suppliers is expected to be published as a proposed rule early in calendar year 1998 followed by a final rule following a period for public comment. DME suppliers will not have to obtain a surety bond until the final rule is published.

We will provide you with additional information concerning the Medicare requirements as it becomes available.

Conflict of Interest Safeguards (BBA 4724(c))

Current law bans any current or former State and local employees, officers, and partners that are or were responsible for the expenditure of substantial amounts under the State plan from committing any act prohibited by section 207 or 208 of title 18 of the United States Code. This BBA provision expands the State officer, partner and employee provisions to include contractors. Also, if any State or local officer, employee, or independent contractor is responsible for selecting, awarding or otherwise obtaining services under a Medicaid state plan, they will be subject to safeguards against conflicts of interest that are at least as stringent as the safeguards that apply under section 27 of the Office of Federal Procurement Policy Act. These provisions are effective January 1, 1998.

For purposes of this provision, we are defining "independent contractors" as any independent entity that is not part of the Federal government and has a contract with a State to provide services.

A copy of sections 207 and 208 of the United States Code and a copy of section 27 of the Office of Federal Procurement Policy Act are enclosed.

Authority to Refuse to Enter Into Medicaid Agreements With Individuals or Entities Convicted of Felonies (BBA 4724(d))

This provision is a clarification of current law. Generally, Medicaid beneficiaries are free to obtain services from any approved providers that undertake to provide them. This new provision clarifies that States are now permitted to bar providers who have been convicted of a felony under State or Federal law from participating as a Medicaid provider if the

State determines that the offense is inconsistent with the best interests of the Medicaid beneficiaries. This provision became effective upon enactment of the BBA, August 5, 1997.

In implementing this provision, States have the flexibility to determine what is "inconsistent with the best interests of Medicaid beneficiaries."

Protection Against Waste, Fraud, and Abuse (BBA 4724(f))

This provision requires States to establish, not later than one year after enactment (August 5, 1998), a mechanism to receive reports from beneficiaries and compile data on alleged instances of waste, fraud, and abuse in the Medicaid program.

It is your responsibility to develop a mechanism for collecting data on waste, fraud, and abuse situations that are brought to your attention. The collection of these data can be done through written reports, oral reporting; e.g., beneficiary hot lines, or other means determined by the States.

However, at this time HCFA is not requiring that States report to us on the mechanism used, the information gathered, or actions taken as a result of this provision. The Fraud and Abuse Technical Advisory Group (TAG) will be asked to consider the need and usefulness of additional HCFA guidance and requirements. The TAG will discuss such things as what data to collect and how to use the data once it is compiled. We will provide further guidance on this provision at a later date.

In addition, we are considering what further actions we may require to assure that States have implemented these provisions. This could be through a State plan amendment or a State certification form (check-off list). We would appreciate any suggestions you have for this process. Our goal is to keep this process as simple as possible.

Please contact Mary Linda Morgan by phone at (410) 786-2011 or by e-mail at mmorgan1@hcfa.gov if you need further information.