



DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

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

February 12, 1998

Dear State Medicaid Director:

The purpose of this letter is to notify you about a recent congressionally enacted revision to the "Hyde Amendment" which affects the Medicaid program and to tell you how this revision in the law is to be implemented.

Effective November 13, 1997, as part of the Department of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 1998, Public Law Number 105-78 (1997), Congress passed a revision of the Hyde Amendment pertaining to Federal funding of abortions under the Medicaid program. As enacted in section 509, the provision states:

- (a) None of the funds appropriated under this Act shall be expended for any abortion.
- (b) None of the funds appropriated under this Act shall be expended for health benefits coverage that includes coverage of abortion.
- (c) The term health benefits coverage' means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

Section 510 continues as follows:

- (a) The limitations established in the preceding section shall not apply to an abortion--
 - (1) if the pregnancy is the result of an act of rape or incest; or
 - (2) In the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician place the woman in danger of death unless an abortion is performed.
- (b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).
- (c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).

Current regulations at 42 CFR 441.203 and 441.206 require that before Federal financial participation (FFP) can be made available, the State must obtain a signed physician's certification that, based on the professional judgment of the physician, the abortion was necessary to save the life of the mother. Because the language of the current Hyde Amendment differs from its predecessors (by requiring that the abortion be necessary due to a physical disorder, injury, or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed) the State must change the wording of the physician's certification to comport with the current statutory language.

As with the language in effect since October 1, 1993, the revised Hyde Amendment provides for funding for abortions if the pregnancy is the result of an act of rape or incest. As discussed in my December 28, 1993 letter, all abortions covered by the Hyde Amendment, including those abortions related to rape or incest, are medically necessary services and are required to be provided by states participating in the Medicaid program. States may

continue to impose reasonable reporting or documentation requirements on recipients or providers as may be necessary to assure them that an abortion was for the purpose of terminating a pregnancy caused by an act of rape or incest. However, those reporting or documentation requirements may not serve to deny or impede coverage for abortions. To insure that reporting requirements do not prevent or impede coverage for these covered abortions, any such reporting requirements must be waived and the procedure considered being reimbursable if the treating physician certifies that in his or her professional opinion, the patient was unable, for physical or psychological reasons, to comply with the requirements.

The new Hyde Amendment language precludes payment for any "health benefits coverage" that includes abortions other than those specifically permitted by the terms of the Hyde Amendment. Therefore, a managed care provider or organization that provides abortions in addition to those reimbursed under the Hyde Amendment pursuant to a contract or other arrangement with the Medicaid agency are not eligible for any Federal funding for any of the services covered by that contract or arrangement. If a state wishes to reimburse managed care providers or organizations to provide additional abortions, it must do so under a separate contract or arrangement using monies unrelated to Federal, state or local Medicaid matching dollars. However, this should not be construed as restricting the ability of any managed care provider to offer abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a state's or locality's contribution of Medicaid matching funds).

As you know, it is necessary for States to adhere to all conditions for Federal Medicaid funding. As part of its ongoing State assessment and audit programs, HCFA may include reviews of abortion claims, if necessary, to assure compliance with these conditions.

Please call my office if you have any questions about this matter.

Sincerely yours,

/s/

Sally K. Richardson, Director

Center for Medicaid and State Operations

cc:

All Regional Administrators

All HCFA Associate Regional Administrators Division of Medicaid and State Operations

Lee Partridge - American Public Welfare Association

Joy Wilson - National Council of State Legislature

Jennifer Baxendell - National Governor's Association