



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). Its purpose is to provide guidance on section 4751 of the BBA, which eliminated the requirement for periodic inspections of care (IoC) for each Medicaid beneficiary receiving services in an intermediate care facility for the mentally retarded (ICF/MR) or in a Mental Hospital (MH).

Prior to the enactment of the BBA, the Medicaid law contained minimum standards for medical review of care and services provided in ICFs/MR and MHs. To ensure compliance with these standards, section 1903(g) of the Social Security Act provides for a reduction in Federal Medicaid funds for extended inpatient hospital stays, unless a State could document that it has an effective program of medical review in ICFs/MR and MHs. The purpose of this penalty, as originally enacted, was to provide an incentive to discourage unnecessary admissions, reduce excessive lengths of stay and ensure that Medicaid beneficiaries are placed in appropriate institutional settings and furnished adequate health services.

As part of the State's compliance, the Medicaid law further required each State to perform annual inspections of the care of Medicaid beneficiaries in participating ICFs/MR and MH's and to document those reviews quarterly. The Health Care Financing Administration (HCFA) was required to impose penalties on noncompliant States.

The BBA became law on August 5, 1997. Specifically, section 4751 of the BBA repeals the requirements formerly contained in Title XIX of the Social Security Act. It provides that States are no longer required to conduct IoC reviews in ICFs/MR and MH's. Since the BBA failed, however, to eliminate the penalty provision in section 1903(g), the literal interpretation of the statute would mean that States and HCFA must follow the current law of 1903(g) and continue to conduct IoC reviews until section 1903(g) was amended or repealed. Nevertheless, consistent with its legislative history, and because not to do so would render the passage of section 4751 meaningless, HCFA has interpreted the amendment made by section 4751 to mean that the penalty section 1903(g) no longer requires IoC reviews. Therefore, HCFA will no longer enforce the sanctions contained in section 1903(g) beginning with the enactment of the BBA. Since section 4751 is self-implementing, effective August 5, 1997, States are no longer required to submit quarterly documentation or comply with any other Utilization Control requirement provided in section 1903(g).

Any questions regarding this provision or the contents of this letter should be directed to Pamela Butler of my staff at (410) 786-6776.

Sincerely,

/s/

Sally K. Richardson

Director

Center for Medicaid and State Operations

cc: All HCFA Regional Administrators

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Jennifer Baxendell, National Governors Association

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