February 20, 1998

Dear State Medicaid Director:

This letter is one of a series that provides guidance on the implementation of the Balanced Budget Act (BBA). The BBA contains numerous provisions relating specifically to managed care. In order to provide guidance on these as quickly as possible, we are issuing a number of managed care policy letters. (See the attached list). This letter is the tenth in the managed care series and relates to the new section 1932(e) of the Social Security Act, as enacted in BBA section 4707(a).

The purpose of this letter is to describe the provision on sanctions for non-compliance found in Section 4707(a) of the BBA.

The purpose of this BBA provision is to provide States with the tools they need to ensure that beneficiaries are enrolled in quality managed care plans. States are now required to establish intermediate sanctions in order to enter into contracts with managed care organizations. The BBA provides guidance to States on the types of situations for which sanctions may be imposed. These situations include failure to provide medically necessary services and charging impermissible premiums or copayments. The first attachment to this letter describes these situations in detail. The BBA also allows States to impose sanctions if the managed care entity distributes any marketing materials that contain false or misleading information.

The BBA language also provides guidance for States on the types of intermediate sanctions they may impose, including civil monetary penalties, the appointment of temporary management, and suspension of payment. The first attachment describes these sanctions in more detail.

In the case of managed care entities that fail to meet the requirements of their contract or violate provisions specified by the BBA, the State has the authority to terminate the entities contract. States must give the managed care entity a hearing prior to termination and allow enrolled individuals to disenroll without cause during the hearing process. In addition to the contract termination authority, if a managed care organization repeatedly fails to meet the requirements of its contract or provisions specified under the BBA, the State must impose temporary management for the managed care organization and allow enrolled individuals to disenroll without cause. HCFA recognizes that the appointment of temporary management by the State on a managed care organization is especially burdensome. Therefore, HCFA wants to clarify that States have the authority to first terminate contracts before they are required to appoint temporary management on the managed care organization. However, if the State chooses not to first terminate the contract and repeated violations occur, the State must then appoint temporary management on the managed care organization and allow individuals to disenroll without cause.

This provision applies to contracts entered into or renewed (i.e., signed by both parties) April 1, 1998 or later.

Despite this new provision under the BBA for States, HCFA's authority to impose sanctions against managed care organizations is maintained.

A more detailed description of the statute is provided in the attached document.

If your staff has any questions about this letter or the BBA provisions described, please have them contact Kristin McGinn on (410) 786-4581 or by email at kmcginn@hcfa.gov.

Sincerely,

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 HCFA Press Office

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ATTACHMENT #1

Sanctions for Noncompliance (SSA 1932(e) -- BBA 4707(a))

Section 1932(e)(1)(A) of the Social Security Act (the Act) describes the use of intermediate sanctions for States. A State may not enter into or renew a contract with a managed care organization unless the

State has established intermediate sanctions. Such sanctions may include any of the ones described in paragraph (2) of this section. The State may impose these sanctions if the managed care organization:

fails to substantially provide medically necessary items and services that are required (under law or under such organization's contract with the State) to be provided to an enrollee covered under the contract;

imposes premiums or charges enrollees in excess of the premiums or charges permitted under Title XIX;

acts to discriminate among enrollees on the basis of their health status or requirements for health care services, including expulsion or refusal to re-enroll an individual, except as permitted by Title XIX, or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the entity by eligible individuals whose medical condition or history indicates a need for substantial future medical services;

misrepresents or falsifies information furnished to the Secretary, the State, an enrollee,

potential enrollee or health care provider;

fails to comply with the physician incentive requirements under section 1903(m)(2)(A)(x) of the Act.

In addition the State may impose sanctions against a managed care entity if the State determines that the entity distributed directly or through any agent or independent contractor marketing materials that contain false or misleading information.

Section 1932(e)(1)(B) of the Act specifies that the above provision does not apply to the provision of abortion services unless the Medicaid managed care organization has a contract to provide abortion services and does not provide those services as provided for under contract.

Section 1932(e)(2)(A) of the Act describes civil money penalties a State may impose:

for each determination that the MCO fails to substantially provide medically necessary services or fails to comply with the physician incentive plan requirements, not more than $25,000.

for each determination that the MCO discriminates among enrollees on the basis of their health status or requirements for health care services or engages in any practice that has the effect of denying or discouraging enrollment with the entity by eligible individuals based on their medical condition or history that indicates a need for substantial future medical services, or the MCO misrepresents or falsifies information furnished to the Secretary, State, enrollee, potential enrollee or health care provider, not more than $100,000.

for each determination that the MCO has discriminated among enrollees or engaged in any practice that has denied or discouraged enrollment, the money penalty may be as high as $15,000 for each individual not enrolled as a result of the practice, up to a total of $100,000.

with respect to a determination that the MCO has imposed premiums or charges on enrollees in excess of the premiums or charges permitted, the money penalty may be as high as double the excess amount. The excess amount charged must be deducted from the penalty and returned to the enrollee concerned.

Section 1932(e)(2)(B) of the Act specifies the conditions for appointment of temporary management.

Temporary management is imposed if the State finds that there is continued egregious behavior by the managed care organization or there is substantial risk to the health of the enrollees. Temporary management may also be imposed if there is a need to assure the health of the organization's enrollees during an orderly termination or reorganization of the MCO or while improvements are made to correct violations.

Once temporary management is appointed, it may not be removed until it is determined that the organization has the capability to ensure that the violations will not recur.

Sections 1932(e)(2)(C), (D) and (E) of the Act describe other sanctions that may be imposed.

The State may permit individuals enrolled in a managed care entity to disenroll without cause.

The State may suspend or default all enrollment of Medicaid beneficiaries after the date the Secretary or the State notifies the entity of a violation determination under section 1903(m) or section 1932(e).

The State may suspend payment to the entity under Title XIX for individual enrolled after the date the Secretary or State notifies the entity of the determination and until the entity has

satisfied the Secretary or State that the basis for such determination has been corrected and will not likely recur.

Section 1932(e)(3) of the Act specifies that if a managed care organization has repeatedly failed to meet the requirements of section 1903(m) or section 1932(e) of the Act, the State must (regardless of what other sanctions are provided) impose temporary management and allow individuals to disenroll without cause.

Section 1932(e)(4) of the Act allows the State to terminate contracts of any managed care entity that has failed to meet the requirements of section 1903(m), 1905(t)(3) or 1932(e) of the Act and enroll the entity's enrollees with other managed care entities or allow enrollees to receive medical assistance under the State plan other than through a managed care entity.

The State must give the managed care entity a hearing before termination occurs and the State must notify the individuals enrolled with the managed care entity of the hearing and allow the enrollees to disenroll if they choose without cause.

ATTACHMENT #2

BBA MANAGED CARE STATE LETTERS

Section Subject Date Issued 4701 SPA Option for Managed Care 12/17/97 4704(a) Specification of

Benefits 12/17/97 4707(a) Marketing Restrictions 12/30/97 4704(a) Miscellaneous Managed Care

Provisions 12/30/97 4704(b) 4706 4707(a) 4707(c) 4708(b) 4708 (c) 4708(d) 4701 Choice, MCE

Definition, Repeal of 75/25, 1/14/98 4703 and Approval Threshold 4708(a) 4705 External Quality Review

1/20/98 4704(a) Mental Health Parity 1/20/98 4701(a) Enrollment, Termination, and 1/21/98 Default

Assignment 4702 PCCM Services Without Waiver 1/21/98