

NLWJC - Kagan

DPC - Box 001 - Folder 014

Abortion - Hyde

Amendment/Medicare

Abortion - medicare coverage

7/13 HHS/CHA agreement

None of the funds appropriated by this Act (including funds appropriated to any trust fund) may be used to carry out the Medicare + Choice program if the Secretary denies participation in such program to an otherwise eligible entity (including a Provider Sponsored Organization) because the entity informs the Secretary that it will not provide, pay for, provide coverage of, or provide referrals for abortions; provided, that the Secretary shall make appropriate prospective adjustments to the capitation payment to such an entity (based on an actuarially sound estimate of the expected costs of providing the service to such entity's enrollees); and provided further, that nothing in this paragraph shall be construed to change the Medicare program's coverage for such services and a Medicare + Choice organization described in this paragraph shall be responsible for informing enrollees where to obtain information about all Medicare covered services.

Delay

Current Law -- Antidiscrimination Amendment to the Balanced Budget Downpayment Act II - March 19, 1996, now codified at 42 U.S.C. § 238n (with proposed additions and deletions for the FY 1999 Labor/HHS Appropriations bill)

§ 238n. Abortion-related discrimination in governmental activities regarding training and licensing of physicians

(a) In general The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that--

(1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such ~~induced abortions~~ induced abortions, or to provide referrals for such training or such abortions.

(2) the entity refuses to make arrangements for any of the activities specified in paragraph (1); or

(3) the entity attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.

(b) Accreditation of postgraduate physician training programs. (1) In general, in determining whether to grant a legal status to a health care entity (including a license or certificate), or to provide such entity with financial assistance, services or other benefits, the Federal Government, or any State or local government that receives Federal financial assistance, shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions. The government involved shall formulate such regulations or other mechanisms, or enter into such agreements with accrediting agencies, as are necessary to comply with this subsection.

(2) Rules of construction. (A) In general, with respect to subclauses (I) and (II) of section 705(a)(2)(D)(i) [42 USCS §292d(a)(2)(H)(i)], (II)] (relating to a program of insured loans for training in the health professions), the requirements in such subclauses regarding accredited internship or residency programs are subject to paragraph (1) of this subsection.

(B) Exceptions. This section shall not--

(i) prevent any health care entity from voluntarily electing to be trained, to train, or to arrange for training in the performance of, to perform, or to make referrals for induced

abortion: or

(ii) prevent an accrediting agency of a Federal, State or local government from establishing standards of medical competency applicable only to those individuals who have voluntarily elected to perform abortions.

(c) Definitions. For purposes of this section:

(1) The term "financial assistance", with respect to a government program, includes governmental payments provided as reimbursement for carrying out health-related activities.

(2) The term "health care entity" includes an individual physician or other health professional, a postgraduate physician training program, and a participant in a program of training in the health professions, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan or any other kind of health care facility or organization.

(3) The term "postgraduate physician training program" includes a residency training program.

(July 1, 1944, ch 373, Title II, Part B, §245, as added April 26, 1996, P. L. 104-134, Title V, §515, 110 Stat. 1321-245; May 2, 1996, P. L. 104-140, §1(a), 110 Stat. 1327.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Act May 2, 1996, P. L. 104-140, §1(a), 110 Stat. 1327, inserted the heading "TITLE I-OMNIBUS APPROPRIATIONS" after the enacting clause of Act April 26, 1996, P. L. 104-134.

DRAFT**DRAFT***Abortion - Medicare funding*

June 22, 1998

The Honorable Don Nickles
Assistant Majority Leader
133 Hart Senate Office Building
Washington DC 20510-3602

Dear Senator Nickles:

Thank you for writing concerning Health Care Financing Administration (HCFA) policy with respect to the coverage of abortion under the Medicare program. We share your goal of ensuring the broadest possible choice of health plans for Medicare beneficiaries, including provider-sponsored organizations, and look forward to working with you and your colleagues to achieve this end. Specifically, you posed three questions with respect to HCFA policy in this area: (1) Does the language of the Hyde amendment control the extent to which Medicare pays for abortions for its disabled population? (2) Does HCFA view abortion as a "medically necessary" service covered by Medicare? (3) Is a health plan required to certify that it will cover abortions in order to qualify as a Medicare + Choice plan?

With respect to your first question, the answer is yes. This Administration is committed to applying the criteria of Hyde to the expenditure of Medicare funds for abortions. The most recent Hyde amendment was enacted in the 1998 Labor, Health and Human Services, and Education Appropriations Act and provides that "[n]one of the funds appropriated under this Act shall be expended for any abortion." Exceptions are provided for cases of rape and incest, and certain circumstances in which a woman's life would be endangered. The Medicare program will provide funding for abortions only as consistent with Hyde.

Your second question asks whether HCFA views abortion as a "medically necessary" service covered by Medicare. Under the statute, Medicare covers items and services that are "reasonable and necessary for the diagnosis or treatment of illness or injury" Absent application of the criteria set out in Hyde, claims for abortion services would be assessed under this general statutory standard. As stated above, however, the Medicare trust funds will be administered consistent with the Hyde criteria.

Finally, you ask whether health plans are required to certify that they will cover abortion in order to qualify as Medicare + Choice plans. You express concern in your letter that such a requirement would eliminate certain qualified provider-sponsored organizations (PSOs) from participation. As you know, the Balanced Budget Act of 1997 (BBA) provides that each

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Medicare + Choice plan must provide all items and services (excluding hospice care) available under Medicare Parts A and B. In addition, the Medicare + Choice statute provides that "only the Medicare + Choice organization shall be entitled to receive payments from the Secretary under this title for services furnished to the individual." Therefore, in almost all instances, HHS is prohibited from making direct payments to providers for Medicare + Choice services.

We share your concern that these legal obligations could make it difficult for plans to participate as PSOs if they have a moral or religious objection to covering abortion services. Our objective in implementing Medicare + Choice is to encourage the participation of as wide a range of PSOs as is permissible under the statute, to help maximize the choices available to beneficiaries across the country. As you know, my Department is currently working through a number of administrative actions that could make it possible for plans that have a moral or religious objection to providing abortion coverage, to participate as PSOs in Medicare + Choice. We look forward to working together to ensure that Medicare beneficiaries have a broad range of choices in selecting a health plan, and to working with you on appropriate means of resolving these issues.

Sincerely,

Donna E. Shalala

United States Senate

OFFICE OF
ASSISTANT MAJORITY LEADER
WASHINGTON, DC 20510-7012

March 19, 1998

The Honorable Donna Shalala, Secretary
Department of Health and Human Service
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Shalala:

It has come to my attention that the Health Care Financing Administration has not provided clear guidance on whether managed care risk plans must certify that they would cover abortions in order to qualify as a risk plan in the Medicare+Choice program. Obviously, this interpretation would unnecessarily limit the types of health plans that would be eligible to provide services to Medicare beneficiaries.

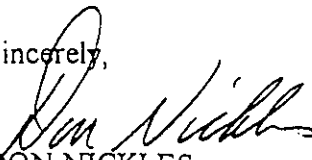
The intent of the Medicare+Choice program was to give Medicare beneficiaries a wide variety of choices when selecting a health plan, including the option of a provider-sponsored organization. Any interpretation which requires abortion coverage in order to be a certified risk plan would be inconsistent with the intent of the Balanced Budget Act of 1997. This type of policy would only serve to eliminate certain qualified provider-sponsored organizations from participation and restrict the health care options available to senior citizens.

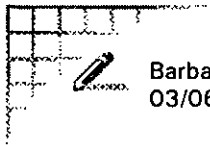
In addition, this type of policy would clearly discriminate against plans who, for religious reasons, may object to providing abortion services. I have received a letter from the New York State Catholic Conference expressing their concern regarding an apparent interpretation by HCFA's Region II office on the issue of covering abortions. It would be a grave mistake for the federal government to prohibit catholic-sponsored health plans from providing care to the elderly and disabled simply because of their moral objections to abortion.

For these reasons, it would be helpful if you could clarify HCFA's policy by answering the following questions regarding Medicare's coverage of abortion. (1) Does the language of the Hyde amendment control the extent to which Medicare pays for abortions for its disabled population? (2) Does HCFA view abortion as a "medically necessary" service covered by Medicare? (3) Is a health plan required to certify that it will cover abortions in order to qualify as a Medicare+Choice plan? A written opinion on this matter would help clarify HCFA's policy and provide much needed guidance for the certification process.

Thank you for your assistance in this matter. I look forward to seeing your response as soon as possible.

Sincerely,


DON NICKLES
Assistant Majority Leader



Barbara D. Woolley
03/06/98 07:48:46 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Laura Emmett/WHO/EOP, Sarah A. Bianchi/OPD/EOP
Subject: HCFAs Interpretation of Medicare Coverage for Abortions

The Catholic Health Association brought to Chris and my attention a situation that we thought you should be aware of regarding HCFAs interpretation that managed care risk plans be required to certify that they would cover medically necessary, elective abortions in order to qualify as a Medicare risk plan. CHA has been given inconsistent reports from HCFA regarding whether and when HCFA requires a health plan to certify coverage of elective abortions. A requirement to certify coverage of elective abortions would create an enormous problem for CH plans when they apply to HCFA to be certified as a Medicare + Choice plan.

Catholic health plans should not be excluded from participation in the Medicare risk plan program or the Medicare + choice program because of their religious belief that the provision or coverage of abortion is morally wrong.

CHA is getting pressure from the pro life side. CHA has asked chris for some written letter from someone. Chris thought we may want to do a call or meeting on the issue.

Message Sent To:

Elena Kagan/OPD/EOP
Jennifer L. Klein/OPD/EOP
Janet Murguia/WHO/EOP
William H. White Jr./WHO/EOP
Audrey T. Haynes/WHO/EOP

Kagan
98 MAR 13 4 7:36

Chats - just the way we like
policy decisions to be communicated! --
but it did get us an answer
from him. Let me know about
going on with this.

THE WHITE HOUSE
WASHINGTON

3-16-98

March 13, 1998

Elena
cc: Bruce

MEMORANDUM FOR THE PRESIDENT AND THE VICE PRESIDENT

FROM: MARIA ECHAVESTE

SUBJECT: OPL WEEKLY REPORT -March 7 - March 13

ACTIONS SUPPORTING PRESIDENTIAL INITIATIVES

RACE INITIATIVE

- **Ethnic community commits to Race Initiative-** Members of the ethnic community met with Judith Winston to make "commitments" for specific projects to further the goals of the Race Initiative, including hosting six regional community dialogues, three police\ community forums, and sponsoring Public Service Announcements. They are also planning to commission a poll on race perceptions, create a youth race program and assist with the campus dialogue program.

SOCIAL SECURITY

- Gene Sperling and OPL met with the leaders of the key aging organizations to address concerns they have raised about our Social Security dialogue. Many of the groups felt excluded by our agreement to have AARP and the Concord Coalition sponsor the Social Security Forums, while others asked us to refrain from using words such as, "exhausted, bankrupt, and broke," when describing 2029. They believe such language furthers the belief that drastic action is needed, i.e. privatization. The groups were pleased by our commitment to meet with them on a monthly basis.

HEALTH CARE

- Reaction to your speech at the AMA was outstanding. They were thrilled with your remarks.
- The Catholic Health Association (CHA) is concerned about HCFA's interpretation that managed care risk plans be required to certify that they would cover medically necessary, elective abortions in order to qualify as a Medicare risk plan. CHA has been given inconsistent reports from HCFA regarding whether and when HCFA requires a health plan to certify coverage of elective abortions. A requirement to certify coverage of elective abortions would create an enormous problem for CHA plans when they apply to HCFA to be certified as a Medicare+Choice plan.

Summary
we can
avoid this -
ISA. Allowed content

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page 1
Read
Kagan