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OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES
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DIVISION OF QUALITY ASSURANCE
ADMINISTRATIVE MEMORANDUM NO. 98-01

TO: Executive Directors of ICFs
DDSO Directors

FROM: Jan Abelseth 
Interim Deputy Commissioner
Division of Quality Assurance

SUBJECT: Independent Professional Review/Independent Utilization Review

DATE: March 6, 1998

We have recently been notified by the Health Care Financing Administration (HCFA) of a change in Federal law which eliminates the Independent Professional Review. This change is effective immediately.

The legislation does not impact on the Independent Utilization Review (IUR) which will continue in conjunction with your Medicaid recertification visit for community based ICF/MRs. IURs will also continue on the same schedule for Developmental Centers.

In light of these changes, we would like to again offer you the opportunity to choose to complete one of the two required independent utilization reviews. Under this option, you submit information to us for our review and determination, and avoid the need for the Division of Quality Assurance (DQA) to perform the second IUR visit. DQA would continue to complete the other required IUR during the annual recertification survey.

The non-visit review occurs six months after the combined Medicaid survey/IUR. For this review option, the appropriate QMRP for each individual funded by Medicaid will provide information on the IUR form. (Identifying labels, forms, instructions and training will be provided to facilities choosing to enroll in the non-visit review). The forms will be sent to Albany and a final review determination will be made by DQA staff. The facility will be notified of the determination and, as applicable, the need for further action (e.g., Second Step Review, corrections of misinformation or inconsistencies).

If your agency chooses to participate in this option and is not yet enrolled, you may contact Melanie Puerto Kosinski at (518) 473-7032 for further information and enrollment.

A copy of the interpretive letter regarding the regulatory changes is attached.

Attachment



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).

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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

All HCFA Associate Regional Administrators
For Medicaid and State Operations

Jennifer Baxendell, National Governors Association

Joy Wilson, National Conference of State Legislatures

Lee Partridge, American Public Welfare Association