



**DEPARTMENT OF HEALTH & HUMAN SERVICES**  
**Centers for Medicare & Medicaid Services**

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

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 of 1997 (BBA) and addresses the provision relating to prohibiting affiliations with individuals debarred by federal agencies. 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 State letters. (A list of those already issued is attached). This letter is the fourteenth in this managed care series.

The purpose of this letter is to provide guidance on the section of the BBA which is intended to prevent "managed care entities" from having affiliations with debarred or suspended individuals. Section 4707(a) of the BBA added Section 1932(d)(1) to the Social Security Act. This section only addresses a managed care entity's affiliation with debarred or suspended individuals.

Future guidance will provide information on the Federal Acquisition Streamlining Act of 1994 (FASA) which made government-wide suspension and debarment requirements applicable to all participants in federal programs. However, for purposes of this letter, you need to know that Section 2455 "Uniform Suspension and Debarment" of FASA provides that all debarments, suspensions, and other exclusions imposed by Federal agencies be given Government-wide effect. The General Services Administration (GSA) maintains a list of parties excluded from federal programs. The "Excluded Parties Lists" (EPLS) and any rules and/or restrictions pertaining to the use of EPLS data can be found on GSA's homepage at the following Internet address - [www.arnet.gov/epls](http://www.arnet.gov/epls).

Briefly, section 1932(d)(1) of the Social Security Act provides that a managed care entity may not knowingly have a director, officer, partner, or person with beneficial ownership of more than 5% of the entity's equity who has been debarred or suspended by any federal agency. Secondly, this provision also prohibits managed care entities from having an employment, consulting, or any other agreement with a debarred or suspended person for the provision of items or services that are significant and material to the entity's contractual obligation with the State.

State agencies should notify managed care entities of their responsibility for certifying to the State agency that they meet these requirements prior to participation in the Medicaid program and at any time there is a changed circumstance from the last such certification. Managed care entities may, but are not required to, consult the "excluded parties list" and may rely on participants' certification that they currently are not debarred or excluded from a federal program. These requirements are outlined in 45 C.F.R. Part 76.

Finally, if a State finds that a managed care entity is not in compliance with this provision, the statute provides that the State:

- Must notify the Secretary of such noncompliance;
- May continue an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) directs otherwise; and
- May not renew or otherwise extend the duration of an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) provides to the State and to Congress a written statement describing compelling reasons that exist for renewing or extending the contract.

This provision affects all contracts entered into or renewed on or after October 1, 1997. HCFA will issue additional instructions on complying with these requirements at a later date. If there are any questions, please contact Elton Malone at (410) 786-2006 or by e-mail at EMalone@hcfa.gov.

Sincerely,

/s/

Sally K. Richardson Director

Center for Medicaid and State Operations

Attachment

cc:

Jennifer Baxendell, National Governors Association Lee Partridge, American Association of Public Welfare  
Joy Wilson, National Conference of State Legislatures HCFA Regional Administrators HCFA Associate  
Regional Administrators HCFA Press Office

## 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 Default Assignment 1/21/98

4702 PCCM Services Without Waiver 1/21/98

4707(a) Sanctions for Noncompliance 2/20/98

4701(a) Provision of Information & Effective Dates 2/20/98

4710(a)

4704(a) Emergency Services 2/20/98

4704(a) Grievance Procedures 2/20/98