



DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

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

March 25, 1998

Dear State Medicaid Director:

This letter is another in a series of letters that provides guidance on the implementation of the Balanced Budget Act of 1997 (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 Enclosure #2 to this letter for a list of managed care letters already issued.) This letter is the seventeenth in this managed care series.

The purpose of this letter is to provide guidance on the BBA's limited exemption from new managed care requirements for waiver programs under section 1115 and 1915(b). Specifically, section 4710(c) provides that none of the provisions contained in sections 4701 through 4710 of the BBA will affect the terms and conditions of any approved waiver under section 1915(b) or 1115 of the Act, as the waiver stood on the date of the BBA enactment--August 5, 1997. This provision is intended to give States some flexibility in how the BBA will impact their approved waiver programs. The provision exempts section 1115 and 1915(b) waivers only from those BBA provisions regarding Medicaid Managed Care contained in Chapter 1 of Subtitle H of the BBA. It specifically does not apply to other chapters or provisions contained elsewhere in the Act.

The extent to which a State's approved waiver program will not be required to come into compliance with these new requirements will be determined by several factors. In general, any provision of a State's section 1115 or 1915(b) waiver program (which was approved or effective as of August 5, 1997) that is specifically addressed in the State's waiver proposal, statutory waivers, special terms and conditions, operational protocol, or other official State policy or procedures approved by HCFA, would not be affected by the BBA provisions, even if it differs from the BBA managed care requirements. As long as the BBA provision is addressed in the State's approved waiver materials, no determination needs to be made as to whether the State's policy or procedures meet or exceed the BBA requirement.

Each State will need to review its current waiver programs as related to each provision in sections 4701-4710 (in consultation with the HCFA Regional Office) to determine whether the BBA provisions apply to the State's waiver programs.

This exemption from BBA requirements will apply to all States' section 1915(b) waiver programs until the date that the waiver authority approved or in effect as of August 5, 1997 expires. As of the date of any waiver renewal or any temporary extension of the 1915(b) waiver authority granted after August 5, 1997, the State will be required to comply with all BBA requirements that are in effect. This will require that contracts which were entered into or renewed on or after October 1, 1997 be modified to comply with the BBA requirements from which the waiver had been previously exempted. However, contracts which were signed prior to that date will retain their exemption from the BBA's contract requirements until renewed or substantively modified, as described in our letter dated February 20, 1998.

Exemptions from the BBA managed care provisions will apply to those section 1115 demonstration waivers approved or in effect as of August 5, 1997, which may be extended for up to three years under the authority in section 4757 of the BBA. These waiver extensions are specifically limited to the Medicaid section 1115 comprehensive statewide health care reform demonstrations, which must be approved under the same terms and conditions that applied before the extension. Therefore, any exemptions from the BBA requirements to which these programs are entitled may continue during the period of the extended waiver authority.

Section 1115 or 1915(b) waivers approved after August 5, 1997 are subject to the BBA requirements that were in effect at the time of waiver approval. (See the State Medicaid Director's letter dated February 20, 1998 regarding effective dates of BBA provisions.)

Enclosure #1 contains some questions and answers on this provisions that have been raised in discussion with various groups. If you have any questions regarding these provisions, please contact Bruce Johnson in the Center for Medicaid and State Operations, on (410) 786-0615.

Sincerely,

/s/

Sally Richardson
Director
Center for Medicaid and State Operations

Enclosure

cc:

Lee Partridge, American Public Welfare Association

Jennifer Baxendell, National Governors' Association

Joy Wilson, National Conference of State Legislators

All HCFA Regional Administrators

All HCFA Associate Regional Administrators for Medicaid and State Operations

HCFA Press Office

Enclosure #1

QUESTIONS AND ANSWERS ON APPLICATION OF BBA PROVISIONS TO WAIVERS

1. What would be an example of a BBA provision that would not apply to a State with section 1115 waiver but would apply to a State with a section 1915(b) waiver?

An example of this would be the enrollment and disenrollment requirements under the waiver. Where, as is the case in most section 1115 demonstrations, a State has waived the requirements regarding enrollment and disenrollment, and established alternative requirements under the waiver, the State's enrollment requirements and procedures may remain in effect. However, since the pre-BBA enrollment and disenrollment provisions could not have been waived under a section 1915(b) waiver, the State would have followed the provisions in section 1903(m) and the new BBA rules would apply.

2. As an example, how and when would BBA provisions be imposed on a State's section 1915(b) waiver that has a period of approval from July 1, 1996 through June 30, 1998?

This waiver would have been in effect as of August 5, 1997, and would be eligible for an exemption from any BBA managed care requirements that would otherwise require a change in the State's waiver provisions that had been approved by HCFA. If the waiver provided for such things as marketing procedures, beneficiary information, or contract requirements for Primary care case managers which differ from those in the BBA but which had been approved by HCFA, these policies and procedures could remain in place, without regard to the BBA requirements in these areas until this waiver authority expired on June 30, 1998. As of July 1, 1998, this waiver program including these provisions would have to comply with the BBA requirements in effect as of that date. Provisions not previously addressed, such as use of a prudent layperson's definition of emergency medical condition, would have to be implemented with respect to contracts entered into or renewed on or after October 1, 1997.

3. How and when are the BBA provisions to be applied to section 1115 demonstrations that are not specifically authorized 3-year extensions under section 4757 of the BBA?

Several States' section 1115 Medicaid demonstrations do not meet the requirements for a 3-year extension under the same terms and conditions in effect prior to the extension of the waiver program. These either do not meet the time limits for submission of an extension request that were in the BBA or are not statewide demonstrations. The BBA managed care provisions would apply to these programs as of the date their current section 1115 authority expired. However, the BBA does not preclude waivers of specific requirements nor preclude permitting Federal financial participation for costs not otherwise matchable in these instances. These determinations would have to be made on a State by State and provision by provision basis.

4. How does this provision interact with the effective date provision regarding provisions in MCO contracts?

In our letter dated February 20, 1998, we listed the effective dates for all of the BBA managed care provisions. As stated in that letter, most new BBA requirements apply to contracts which are entered into or renewed (i.e., signed by both parties) on or after October 1, 1997. However, with respect to contract provisions that are also provisions in a State's waiver, the effective date would be delayed until the waiver provision is changed to comply with the BBA. As stated above, this change in the State's waiver proposal, operational protocol, Special Terms and Conditions, or elsewhere, must take place when the waiver that was in effect on August 5, 1997 expires. Contract provisions that are governed by the waiver provision would need to be modified effective with the date that the waiver authority expires, is temporarily extended, or renewed. Thus, in the 1915(b) waiver described in the response to question #2, contracts entered into on or after July 1, 1998 would be required to comply with all BBA contract requirements effective as of that date. Contracts entered into prior to that date (but after October 1, 1997) would only be subject to BBA provisions which were not addressed in approved provisions of the State's waiver. As set forth in section 4710(a) of the BBA (and described in our February 20 letter) the BBA contract provisions do not apply to contracts that had been signed by both parties prior to October 1, 1997, until those contracts are renewed or substantively amended.

5. How does section 4710(c) apply to BBA provisions that are not contained in sections 4701 through 4710?

This section exempts section 1115 and 1915(b) waivers only from those BBA provisions contained in Chapter 1 of Subtitle H of the BBA, which are the provisions regarding Medicaid Managed Care. It specifically does not apply to other chapters or provisions contained in the other BBA chapters on Flexibility in Payment to Providers (including the provision on payments to FQHCs), Federal Payments to States (including the provision on disproportionate share hospital payments), Eligibility, Benefits, or Administration and Miscellaneous.

Enclosure #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, and Approval Threshold 1/14/98
4703
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
4707(a) Prohibiting Affiliations with Debarred Individuals 2/20/98
4704(a) Anti-discrimination of Providers and Anti-Gag Rule 2/20/98
4707(a) Marketing Restrictions 2/20/98