DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

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

January 20, 1998

Dear State Medicaid Director:

This letter is one of a series on State letters to provide guidance on the implementation of the Balanced Budget Act (BBA) of 1997. The purpose of this letter is to inform you that HCFA has just published a regulation which implements one of the BBA provisions targeting fraud and abuse in the Medicaid and Medicare programs. The regulation, published in the Federal Register on January 5, 1998 as a final rule with comment period, addresses surety bond and capitalization requirements for home health agencies (HHA). Section 4724(b) of the BBA ties the Medicaid surety bond requirements to those applicable to Medicare HHAs.

Some of the main provisions of the regulation are:

- Each HHA must secure a surety bond in order to participate in the Medicare and Medicaid programs. There must be a separate surety bond for each program.
- These provisions are effective January 1, 1998, but for the initial term, States will be given until February 27, 1998 to implement these provisions. The Medicaid State agencies need to be sure this timeframe is met by HHAs for submitting their surety bonds.
- For the Medicaid program, each HHA must obtain, from an acceptable authorized surety, a surety bond that is the greater of $50,000 or 15 percent of the annual Medicaid payments made to the HHA by the Medicaid agency for HHA services for which Federal financial participation (FFP) was available.
- For the Medicare program, each HHA must obtain, from an acceptable authorized surety, a surety bond that is the greater of $50,000 or 15 percent of the annual amount paid to the HHA by the Medicare program as reflected in the HHA's most recently accepted cost report.

In addition, an HHA entering the Medicare or Medicaid program on or after January 1, 1998 must demonstrate that it actually has available sufficient capital to start and operate the HHA for the first 3 months. Medicaid State agencies need not do anything with this provision with one exception. In the case of Medicaid-only HHAs, the Medicaid State agency will be responsible for determining whether the capitalization requirements set forth in 42 CFR 489.28 are met in the same manner that Medicare intermediaries make the determination for HHAs requesting to enter the Medicare program only or for both the Medicare and Medicaid programs.

Government-operated HHAs, with some exceptions, will be exempt from the surety bond requirements under Medicaid.

As stated in our December 17, 1997 letter to you, we are considering what further actions may be required to assure that States have implemented these provisions. This could be through a State plan amendment or a State certification form (check-off list). We would appreciate any suggestions you have for this process. Our goal is to keep this process as simple as possible.

For your information, HCFA plans to issue a proposed Medicaid regulation on surety bonds for DME suppliers early in calendar year 1998. This regulation will not take effect until a final rule is published following a period for public comment.

If you have any questions concerning these materials, please contact Mary Linda Morgan by phone at (410) 786-2011 or by e-mail at mmorgan1@hcfa.gov. To view the published HHA regulation on the Internet, the website is: http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi.

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 Lee Partridge - American Public Welfare Association Jennifer Baxendell - National Governors' Association Joy Wilson - National Conference of State Legislatures HCFA Press Office