



DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

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

JUN 10 1998

Dear State Medicaid Director:

The purpose of this letter is to make you aware of statutory provisions enacted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208) and described in interim regulations published by the Immigration and Naturalization Service (INS) on October 20, 1997. In brief, this provision authorizes States to recover from immigrants' sponsors the unreimbursed costs of Medicaid benefits paid on behalf of certain immigrants.

This letter informs you of these provisions and explains their relationship to other rules regarding sponsors of aliens and Medicaid recoveries. For reasons described below, the rules at issue in this letter will have a limited impact on Medicaid. Nonetheless, we felt States should be alerted to the implications of this new law.

In the interest of clarity, we wish to emphasize that the policies contained in this letter pertain only to recoveries from immigrants' sponsors, and do not change the prohibitions against recoveries from the immigrants themselves, as described in our letter of December 17, 1997 to you. (We have enclosed a copy of that letter for your information). The only circumstances under which you may seek to recover for legitimate Medicaid expenditures related to immigrants *are* those described in the subsequent portion of this letter, where the recovery is from a sponsor who has an obligation under immigration law to pay. The prohibitions described in our earlier letter relate to recoveries from the immigrants themselves for Medicaid benefits they or a family member legitimately received.

As explained in the October 20, 1997 interim INS rule, the new provisions are effective for immigrants who file with the INS on or after December 19, 1997, for an immigrant visa, for admission as an immigrant, or for adjustment of status, who are applying as: a) an immediate relative, b) a family-based immigrant, or c) an employment-based immigrant, and who, in order to be admissible, are required to have a sponsor who signs an affidavit of support under section 213A of the INS Act. States will be able to obtain information about sponsorship from the INS.

In signing such an affidavit, the sponsor agrees to provide financial support to the immigrant, and also agrees to reimburse any agencies which provide means-tested public benefits (e.g., Medicaid) to a sponsored immigrant. After the State applies the sponsor-to-alien deeming criteria, should the sponsored immigrant obtain any Medicaid.

benefits, the agency may sue the sponsor in Federal or State court to recover any unreimbursed Medicaid costs for those benefits, except for emergency services which are excluded from recovery. Procedural requirements that you must follow in doing this are more fully described in the October 20, 1997 INS rule

We believe that the impact on Medicaid would be limited for three reasons. First, most persons filing for admission as an immigrant on or after the effective date of this new rule are banned from receiving non-emergency Medicaid services for five years under section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Therefore, in most cases, there should be no Medicaid expenditures to recover in the first place.

Second, those groups of immigrants who would be eligible for the full Medicaid benefit package are not populous. Veterans and persons on active duty in the U.S. military, their spouses and dependent children and their unremarried surviving spouses are exempt from the 5 year ban. Refugees, asylees, aliens whose deportation is being withheld, immigrants who are Cuban or Haitian entrants, and certain Amerasian immigrants are also exempt. Consequently, the number of newly admitted permanent residents in these categories who receive Medicaid benefits, who will subsequently acquire sponsors that are subject to the affidavit of support and from whom recoveries may be pursued is small.

Third, even when the five year ban is not at issue, States will be required to attribute the income and assets of the sponsor when determining the immigrant's eligibility for Medicaid. The sponsor-to-alien deeming rule continues for as long as the sponsor is obliged under INS rules to provide support, in most cases until the immigrant becomes a citizen. A separate SMD letter is being developed and will be issued soon to explain the HCFA policy to be applied when a sponsored alien is subject to the deeming of the sponsor income and resources.

If you have any questions about this issue, you can contact either Mark Ross on (410) 786-5855, or Robert Tomlinson on (410) 786-4463.

Sincerely,

/s/

Sally Richardson

Director

Center for Medicaid and State Operations

Enclosure

cc:

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