

Jan. 27, 1999

Dear State Medicaid Director:

In the past few months we have received reports of providers which have inappropriately required Medicaid patients to make cash payments for Medicaid covered services. There have been reports from States of incidents where an anesthesiologist would not provide an epidural to a Medicaid patient in childbirth unless she paid in advance, with her own funds, for the procedure. In one instance, the obstetrician had ordered the epidural in advance but when the woman was in active labor, she was refused this service for lack of pre-payment. Even though she tried to pay by check, credit card and a Western Union Money telegram, the doctor refused anything but cash. Treatment of a Medicaid patient in this manner is not just a concern, it is alarming. I am writing to request that you alert your hospitals to this situation and make every effort to assure that they understand their responsibilities in this area under the conditions of participation.

It is important to emphasize a hospital's responsibilities in this situation under the Medicaid program. A hospital which accepts a Medicaid patient for treatment accepts the responsibility for making sure that the patient receives all medically necessary services. The conditions of participation which govern hospitals providing care to Medicaid and Medicare patients require that the governing body of the hospital assures accountability of the medical staff for the quality of care provided to patients. This means that there must be an effective hospital-wide quality assurance program to evaluate the provision of patient care; and that all organized services related to patient care, including services furnished by a contractor must be evaluated and where deficiencies are identified, remedial action must be taken (42 CFR 482.12, 21 & 22).

A Medicaid State agency may place appropriate limits on a service based on medical necessity or utilization control criteria (42 CFR 440.230(d)). Accordingly, if providers (including but not limited to anesthesiologists) do not accept a particular patient for treatment, the hospital has the responsibility of assuring the delivery of these medically necessary services. Where epidurals are a covered benefit under a State's Medicaid program and the service is determined to be medically necessary, a pregnant Medicaid beneficiary is entitled to receive the service from a provider who has accepted her for a patient without the imposition of deductibles, cost sharing or similar charges.

Each physician determines whether or not to accept an individual patient for treatment. A doctor who is participating in a State's Medicaid program, and agrees to treat a Medicaid patient covered by the state plan, may not require a copayment for his or her services, but must accept payment by the State Medicaid agency as payment in full. Under federal Medicaid law, deductions, cost sharing or similar charges are not permitted for Medicaid services furnished to pregnant women. Thus, a participating physician's demand for these additional payments would be in violation of the law. However, where a physician accepts an individual for treatment not as a Medicaid patient but as a private patient, and the Medicaid beneficiary accepts the arrangement as a condition of treatment through pregnancy and delivery, the arrangement is not governed by Medicaid program requirements. For

example, in such a physician non-Medicaid patient arrangement, where a routine delivery is anticipated, as part of her prenatal counseling the patient's options for pain relief medication during childbirth may be explained to her. If she requests an epidural, it is explained that the anesthesiologist's fee for this procedure must be paid in advance, prior to the time of hospitalization and delivery. This is not a situation covered by Medicaid program requirements.

The Department of Health and Human Services' Office of Inspector General has been asked to investigate the provider referred to in this letter's first paragraph. To be pro-active about the concerns which are being raised, we urge you to alert your providers to their respective responsibilities with respect to services provided to pregnant Medicaid patients.

Thank you for your cooperation. If your staff have questions, regarding this letter they may be directed to Peggy Rahn via e-mail at prahn@hcfa.gov, or by phone at (410) 786-3284.

Sincerely,
/s/
Sally K. Richardson
Director
Center for Medicaid and State Operations

cc:

Nolan Jones National Governors' Association
Joy Wilson National Conference of State Legislatures
Lee Partridge American Public Human Services Association
All HCFA Regional Administrators
All HCFA Associate Regional Administrators for Medicaid and State Operations
Department of Health and Human Services Office of Inspector General