



DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

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

December 30, 1997

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). 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 (list of those already issued is attached). This letter is the third in this managed care series.

The provision in section 4707(a) of the BBA relating to restrictions on marketing enrollment for managed care entities is described in this letter. HCFA believes this provision will enable States to strengthen consumer protections in the area of marketing and will encourage beneficiary participation in the marketing review process.

According to the new BBA provision, managed care entities (either by themselves or through any agent, such as an independent contractor) cannot distribute marketing materials without prior State approval and the materials cannot contain false or misleading information. HCFA is proposing that this prior approval provision be effective February 1, 1998. We welcome any comments about this effective date, as the law requires HCFA to consult with the States to determine this date. Please provide comments by January 16, 1998. Once comments have been received, HCFA will either confirm the date proposed or select an alternative date. All other marketing restrictions within the BBA are effective October 1, 1997.

In the process of approving these materials, the new law requires States to consult with a medical care advisory committee. Currently, there is a medical care advisory committee (MCAC) established by regulation. Since the term "medical care advisory committee" is written precisely in the BBA, States must use an MCAC for consultation in review of marketing material, whose composition meets the regulatory definition. States, if they choose, do not have to consult with their current MCAC, but can establish a new MCAC for marketing review consultation. The committee's membership must include physicians and other representatives of health professions who are familiar with the needs of low-income population groups, as well as various consumer group representatives, including Medicaid beneficiaries and consumer advocates for this population. Although States must provide for consultation with an MCAC, the structure of the consultation is to be determined by the States. HCFA understands that States have concerns regarding this provision and we are interested in providing technical assistance to help States with implementation.

In addition to the above requirements, the law requires managed care entities to distribute marketing materials within the entire service area specified in their contract. Further, managed care entities may not entice a potential enrollee to join the managed care entity by offering the sale of any other type of insurance as a bonus for enrollment and they must ensure that each potential enrollee receives accurate oral and written information in order that a potential enrollee can make his/her own informed decision as to whether to enroll or not.

Finally, the managed care entity may not conduct, directly or indirectly, door-to-door, telephonic or other cold-call' marketing enrollment practices. These three marketing practices are prohibited, whether conducted by the managed care entity itself ("directly") or by an agent or independent contractor ("indirectly"). Cold call marketing is defined as any unsolicited personal contact with a potential enrollee by an employee or agent of a managed care entity for the purpose of influencing the individual to enroll with the entity. Marketing by an employee of the entity would be considered direct; marketing by an agent would be indirect. This would still allow managed care entities to market at health fairs and to contact, in person, potential enrollees who request further information about the entity.

More detailed descriptions of the statute and regulatory references are provided in the attached document.

If your staff has any questions about this letter or the BBA provisions described, please have them contact Kristin McGinn on (410) 786-4581 or by email at kmcginn@hcfa.gov

Sincerely,

/s/

Sally K. Richardson
Director
Center for Medicaid and State Operations

Attachment

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

SUMMARY OF MEDICAID MARKETING RESTRICTIONS in BALANCED BUDGET ACT of 1997

Restrictions on Marketing (SSA 1932(d)(2)) -- BBA 4707(a)

Section 1932(d)(2)(A) of the Social Security Act (the Act) requires that managed care entities may not distribute, directly or through any agent or independent contractor, marketing materials within any State

- without prior approval of the State, and
- that contain false or misleading information.

The Secretary is required to consult with States regarding the effective date of the prior approval provision. HCFA has proposed an effective date of February 1, 1998, but will wait for comments from the States before the date is finalized. In addition, in the process of reviewing and approving marketing materials, States must consult with a medical care advisory committee.

Section 1932(d)(2)(B) of the Act requires managed care entities to distribute marketing materials to the entire service area of the entities contract under section 1903(m) or section 1903(t)(3).

Section 1932(d)(2)(C) of the Act specifies that a managed care entity, or any agency of such entity, may not seek to influence an individual's enrollment with the entity in conjunction with the sale of any other insurance.

Section 1932(d)(2)(D) of the Act prohibits marketing fraud. Managed care entities can not, either directly or indirectly, conduct door-to-door, telephonic or "cold call" marketing of enrollment.

42 CFR 431.12 Medical Care Advisory Committee

42 CFR 431.12(d) defines the membership of a medical care advisory committee. The committee must include the following:

- board certified physicians and other representatives of the health professions who are familiar with the medical needs of low-income population groups and with the resources available and required for their care;
- members of consumers' groups, including Medicaid beneficiaries, and consumer organizations such as labor unions, cooperatives, and others; and
- the director of the public welfare department or the public health department, whichever does not head the Medicaid agency.

BBA MANAGED CARE STATE LETTERS

Section Subject Date Issued

4701 SPA Option for Managed Care 12/17/97

4704(e) Specification of Benefits 12/17/97