



## DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

Center for Medicaid and State Operations

7500 Security Boulevard

Baltimore, MD 21244-1850

DEC 17 1997

Dear State Medicaid Director:

I am writing to address the treatment of legal aliens who are being excluded from entry into the United States because they were at one time, or are now considered to be, at risk of becoming a "public charge". The Health Care Financing Administration (HCFA) is aware that State agencies may have released confidential information pertaining to individuals' past receipt of certain benefits to Federal agencies. In addition, there may have been instances in which individuals have had the opportunity, or have even been compelled, to repay the value of Medicaid benefits received in the past. HCFA believes that this is a serious problem, and this letter is intended to clarify the law with respect to the disclosure of information about an individual's receipt of Medicaid benefits. It will also describe why States generally may not accept payments from individuals who attempt to repay the State for Medicaid benefits.

Section 212(a)(4) of the Immigration and Nationality Act (INA) states that any alien who is likely to become a public charge is "excludable." It has come to our attention that the State Department, the Immigration and Naturalization Service (INS), and certain immigration judges are relying on information provided by States regarding past receipt of Medicaid assistance to make public charge exclusion determinations. In addition, it appears that some aliens have either been asked to reimburse States for the amount of past Medicaid benefits provided to them, or have volunteered to make such reimbursement to States.

Two issues require clarification. The first issue is whether and under what circumstances States may release information to the INS, State Department and immigration judges regarding receipt of Medicaid benefits. Section 1902(a)(7) of the Social Security Act requires States to safeguard information regarding applicants for and recipients of Medicaid benefits and prohibits disclosure of that information to an outside entity unless it is directly connected to the administration of the State plan. We have determined that the INS and State Department public charge determinations would not be connected to the administration of the State plan, unless such determinations will directly assist the State in recovering outstanding debts from an alien (most commonly involving overpayments or fraud). The mere past receipt of Medicaid, on the other hand, in the absence of an overpayment or fraud, does not create a debt. Such benefits would have been legitimately received, and therefore the beneficiary is not indebted to the State.

It is important to note that this policy is consistent with section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which provides that State and local entities may not be prohibited from exchanging information with the INS about the

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immigration status of aliens in the United States. Section 434 pertains only to information exchanges related to a person's immigration status, not to the Medicaid information protected under Title XIX. Therefore, existing Medicaid restrictions on States exchanging information about a person's Medicaid status continue in effect without change.

The second issue is whether States may accept repayment by an individual for Medicaid benefits that were legitimately received. The Medicaid program has no authority to collect repayments of benefits from current or former beneficiaries except in cases where those benefits were fraudulently received or an overpayment has occurred. This applies both to the Federal and the State share of Medicaid benefits.

*In conclusion, State Medicaid agencies are not authorized to provide information about the receipt of benefits or the dollar amount of these benefits to the INS, the State Department or immigration judges unless that information will assist the State in collecting outstanding debts. Even if an individual requests documentation of the amount of benefits received, this information is not to be released because the disclosure is not directly connected to the administration of the Medicaid State plan. Finally, States are not authorized to collect repayments of legitimate Medicaid spending on behalf of immigrants.*

I hope this information is helpful. If you have any further questions, please contact Bob Tomlinson at (410) 786-4463.

Sincerely,



Sally K. Richardson

cc:

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