

January 2, 2001

Dear State Medicaid Director:

We are revising the process for reviewing and approving State plan amendments. As you know, when a State submits a plan amendment, HCFA has a 90-day timeframe within which to approve the amendment, disapprove the amendment, or request additional information. Failure by HCFA to act timely results in the plan being deemed approved. In cases in which we send the State a request for additional information, the State currently has an indefinite amount of time to respond, and often draws down Federal financial participation (FFP) on the amendment while it is in this pending status. Once the State responds, HCFA has a second 90-day timeframe within which to approve or disapprove the amendment.

Over the years, there has been a steady increase in the number of pending State plan amendments that have been submitted by the State and for which the State has not responded to our request for additional information. The national backlog of pending amendments now exceeds three hundred. This backlog creates a number of problems. The complicated process of trying to determine which plan pages precede the new pages often hampers our review of new amendments. Problems arise when States make efforts to resolve older pending amendments because expertise on the older amendments is often lost due to staff turnover. Further, States are at risk of lawsuits from providers as they are operating under a State plan which is not yet approved. Finally, should a plan amendment be ultimately disapproved, the law requires HCFA to recover all funds drawn down under the amendment, which may be potentially large sums of money for unapproved services.

Effective with this letter, we will track the time period from when we request additional information. If we have not received the State's response to our request for additional information within 90 days, we will initiate disapproval action on the amendment. We believe that this action will be in the best interest of the States, the Federal government and the public by assuring that all plans are acted on in a timely fashion. HCFA's timeframes for review, i.e., 90 days to review the initial amendment and 90 days to review the response, will still apply, although in conjunction with this initiative, we will do our utmost to approve or request additional information as quickly as possible.

For plan amendments submitted after today and effective January 1, 2001 and thereafter, we also will not provide FFP for any State plan amendment until it is approved. This means we will not advance funds to the State through the Form HCFA-37 or Form HCFA-21B at the beginning of the quarter. Also, we will defer and/or disallow any claims for FFP submitted on the Form HCFA-64 or Form HCFA-21 expenditure reports related to any pending State plan amendments submitted after January 1, 2001. Under our new procedures for timely resolution of these amendments, we do not believe this will generally be a hindrance to drawing FFP.

However, this will prevent us from advancing funds on pending amendments that may be subsequently disapproved.

To implement this new policy effectively, we know that we will need to address the backlog of pending amendments, which are superseded by new amendments.

Therefore, beginning today, we will work with you to separate the plan pages in new amendments from the plan pages in preceding amendments. However, we remain concerned about these earlier amendments and have asked the Regional Offices to work with you to resolve these amendments as soon as possible. We intend to resolve these older amendments in a manner that is both timely and satisfactory to us both. Where we believe the policy in the proposed amendment is not allowable under Medicaid law, regulations or, policy, we may take further action on these pending amendments. However, we would only do so where we cannot resolve our concerns with the State, or where the State continues to fail to respond to the pending request for additional information.

I expect that our new process will prevent a future backlog of amendments while gradually resolving the current backlog. I know that you share our commitment to effectively administer the Medicaid program and hope you will endeavor to work with us to implement these new guidelines as smoothly as possible.

Sincerely,

/s/

Timothy M. Westmoreland
Director

cc:

HCFA Regional Administrators

HCFA Associate Regional Administrators for Medicaid and State Operations

Office of the Inspector General

General Accounting Office

Lee Partridge, Director, Health Policy Unit - American Public Human Services Association

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