



Ref: S&C-01- 04

DATE: February 16, 2001

FROM: Director
Survey and Certification Group
Center for Medicaid and State Operations

SUBJECT: Revisions to Community Mental Health Center (CMHC) Instructions as a Result of Medicare, Medicaid, and State Children's Health Insurance Program Benefits Improvement and Protection Act of 2000 (BIPA)

TO: Associate Regional Administrators, DMSO
State Survey Agency Directors

The purpose of this Memorandum is to inform you of changes to the Social Security Act (the Act) with respect to CMHCs as a result of the passage of BIPA. Section 431 of BIPA amended Section 1861(ff)(3)(B) of the Act concerning the qualifications that must be met by some CMHCs to participate in the Medicare program.

In order to facilitate your review of the changes made by BIPA we are setting out here the entirety of section 1861(ff)(3)(B) of the Act. Section 1861(ff)(3)(B) now reads:

“(B) For purposes of of subparagraph (A), the term “community mental health center” means an entity that

(i) (I) provides the mental health services described in section 1913(c)(1) of the Public Health Service Act; or (II) in the case of an entity operating in a State that by law precludes the entity from providing itself the service described in subparagraph (E) of such section, provides for such service by contract with an approved organization or entity (as determined by the Secretary);

(ii) meets applicable licensing or certification requirements for community mental health centers in the State in which it is located; and

(iii) meets such additional conditions as the Secretary shall specify to ensure (I) the health and safety of individuals being furnished such services, and (II) the effective and efficient furnishing of such services, and (III) the compliance of such entity with the criteria described in section 1931(c)(1) of the Public Health Service Act.”¹

Footnote

Please note that the reference in the BIPA provision relating to section 1931(c)(1) of the PHSA is a transposition error and should be read as 1913(c)(1) of the PHSA.

Thus, as a result of BIPA amendments to the Act, a CMHC that is precluded by State law from providing the core service related to screening described in section 1913(c)(1)(E) of the Public Health Service Act (PHSA) may provide the screening under a contract with an approved organization or entity that is determined to be acceptable by the Health Care Financing Administration on behalf of the Secretary. Consequently, this memorandum puts you on notice that effective March 1, 2000, screening may now be performed by a CMHC via a contract in spite of the State law preclusion, and any prior conflicting guidance is superseded.

For example, several of the Model letters contained in the State Operations Manual (SOM) Exhibits referencing a denial of a CMHC's request for Medicare participation or termination of a CMHC because of a service being precluded under State law must be amended before usage to reflect the change made by the BIPA provision. The BIPA language applies to both those CMHCs participating currently in the Medicare program as well as new applicants requesting participation in the program.

It is important to distinguish the term "contract" used in the BIPA amendments and the term "under arrangement" defined in section 2250 of the SOM and in section 3007 of the Medicare Intermediary Manual. A CMHC may provide one or more core services "under arrangement" with another entity if the service is authorized by State law, the CMHC retains full legal responsibility, and a written agreement or contract is in place as explained in section 2250 of the SOM. All requirements for performing a core service either directly or "under arrangement" remain intact and unaffected by the BIPA amendments.

The BIPA amendments allow a CMHC to provide screening by "contract" in the limited circumstance when the CMHC has not been given the authority to provide the service itself under State law. For purposes of section 1861(ff)(3)(B), we believe a "contract" ought to provide the following: (1) the name, address, and provider number, if applicable, of the contractor(s); (2) that the contractor meet applicable licensing or certification requirements in the State in which the CMHC is located to conduct screening for patients being considered for admission to State mental health facilities to determine the appropriateness of such admission; (3) that the contractor must provide the CMHC with the results of the screening for the patient (s) for which the CMHC requested screening; (4) the date the contract became effective, the term of the contract, and the manner of the contract's termination or renewal; and (5) a statement that the contract will be made available to HCFA, the State survey agency, the CMHC's Medicare fiscal intermediary (FI) and the onsite contractor upon request.

The HCFA regional office, on behalf of the Secretary, may approve an entity or organization as a contractor for the purpose of the BIPA screening provision if the organization's or entity's contract with the CMHC meets all of the terms of the contract as described in this memorandum. HCFA will not grant a "blanket approval" for an entity or organization to conduct screening under a contract with a CMHC, but instead, must review each contract to ensure that it meets the prescribed contract terms. A contractor may contract with more than one CMHC to provide screening, and a CMHC may contract with more than one entity or organization to provide screening.

Although the State, the FI or the onsite contractor may recommend to HCFA that the CMHC's contract to conduct screening in accordance with section 1861(ff) (3)(B)(i)(II) be approved, HCFA itself must determine if the screening is with an approved organization or entity. The CMHC must maintain documentary evidence that screening occurred in a particular case and provide a copy of the contract for screening to HCFA upon request.

The BIPA amendments make no substantive change to the PHSA/HCFA requirement that the CMHC must provide the core services described in section 1913(c)(1) of the PHSA (including screening) and not just be capable of providing the services. Therefore, the "Threshold and Service Requirements" contained in the SOM must continue to be followed.

When screening is going to be provided under contract, under the newly revised terms of section 1861(ff)(3)(B), the CMHC must maintain and provide documentary evidence to HCFA that the screening occurred even though the CMHC may not be legally responsible for the screening results. Providing a service under contract does not mean merely referring an individual to another organization or entity.

The BIPA provision in section 431 which added a new paragraph relating to "additional conditions as the Secretary shall specify..." will require consideration by HCFA to determine whether we need to establish additional conditions.

We will ask the Office of Financial Management to notify the FIs and the contractors who conduct the CMHC site visits, of this memorandum.

EFFECTIVE DATE: Surveys conducted on or after March 1, 2001

TRAINING: This policy should be shared with all survey and certification staff, surveyors, their managers and the State/regional training coordinator. We will include this change in the next revision to the SOM related to CMHCs.

/s/
Steven A. Pelovitz