

TAB - F ADMINISTRATIVE
& LEGISLATIVE ISSUES

**NEGOTIATIONS WITH NGA ON OTHER MEDICAID
ADMINISTRATIVE AND LEGISLATIVE ISSUES**

ISSUES WHERE AGREEMENTS WERE REACHED

Prescription Drugs

- **NGA Proposal** - States wanted the assurance that they may still use prior authorization as a cost containment mechanism for prescription drugs.

States also expressed concern regarding the definition of "new drugs" and wanted the assurance that the definition of "new drugs" in the Medicaid program is assigned only to drugs that are new chemical or molecular entities.

- **HCFA Response** - On the issue of prior authorization of prescription drugs, the HCFA/NGA discussions further reinforced States' ability to use and develop prior authorization systems, to expand the number of restricted drugs, and to make prior authorization decisions based on the cost of the drug.

HCFA also agreed with the States on the definition of new drugs. This policy is reflected in a current regulation under development.

Reducing the Reporting Burden on States

- **NGA Proposal** - States expressed concern regarding the amount of financial management reporting that was required.
- **HCFA Response** - In response to States' concerns on financial reporting requirements, we have eliminated some of the requirements and reduced the amount of data captured. These forms have been approved by the State budget and financial Technical Advisory Group (TAG), and the entire package is moving forward to the Department and OMB for final review and clearance.

Transfer of Assets and Medicaid Qualifying Trusts

- **NGA Proposal** - States expressed concern regarding the loopholes in the transfer of assets and Medicaid qualifying trust policies that allowed non-poor persons to become eligible for the Medicaid program.

- HCFA Response - HCFA and the NGA agreed that loopholes in the transfer of assets and Medicaid qualifying trusts provisions needed to be tightened to prevent non-poor persons from artificially impoverishing themselves to become eligible for Medicaid.

Regulations under development on transfer of assets and Medicaid qualifying trusts will interpret the statute as stringently as possible to tightened loopholes and strengthen States' capacity to limit non-poor persons from accessing the Medicaid program.

Both issues are addressed in the omnibus budget reconciliation package for FY 1994.

Physician Qualifications

- NGA Proposal - States were concerned that the minimum qualifications for physicians who serve pregnant women and children were more stringent than other requirements for physician participation in the Medicaid program, and could limit access to health care services. These requirements were part of the OBRA 90 legislation.
- HCFA Response - HCFA agreed with the States' concerns and agreed to use Secretarial discretion to extend the effective date for the more limiting requirements.

HHS is publishing a proposed regulation which will ask commenters to provide recommendations on the types of providers which should be included as providers qualified to provide services to pregnant women and children.

State Documentation of Access to Obstetric/Pediatric Services

- NGA Proposal - States expressed concern about the current standards States must use to assure that a State's payment rates for obstetric and pediatric services are adequate to provide access to care. The standards may be ineffective and are costly to meet.
- HCFA Response - HCFA agreed with the States' concerns and has initiated a contract with the NGA to develop alternative methods for States to document access to obstetric and pediatric care. The NGA has agreed to complete this study as soon as possible.

ISSUES WHERE AGREEMENTS WERE NOT REACHED

Early Periodic, Screening, Diagnosis, and Treatment (EPSDT)

- NGA Proposal - Because of budgetary constraints, States expressed the need to specify the extent to which States can limit the scope of Medicaid reimbursed services covered as a result of EPSDT screens.
- HCFA Response - In May 1993, HCFA wrote to all State Medicaid Directors and clarified States' flexibility to apply medical necessity criteria to determine the scope of services provided under the EPSDT program.

Even with this policy clarification, States expressed the desire to limit the scope of Medicaid services even further, perhaps limiting EPSDT services to only those covered in their individual State plans.

HCFA understands that an obligation to pay for all medically necessary treatment services for children can place States in a budgetary dilemma whereby they may have to forego coverage of some optional Medicaid services or populations. Nevertheless, we believe that in matters concerning EPSDT, as with other statutorily required services, the Federal government has a role in assuring that those required services are covered and provided.

To change the law to make optional the provision of necessary treatment for children would not be consistent with our child health objectives.

Eligibility

- NGA Proposal - States expressed the need to collapse existing eligibility categories and optional eligibility groups and to reduce the poverty level at which pregnant women and children are made eligible.
- HCFA Response - The health reform proposal will expand coverage to the uninsured. Therefore, we cannot support proposals which may result in creating a larger pool of uninsured individuals. We also do not support proposals that further limit eligibility for pregnant women and children. Finally, collapsing existing eligibility categories may have the unintended results of expanding eligibility categories or, conversely, restricting eligibility to a greater extent than currently.

Qualified Medicare Beneficiaries (QMBs)

- **NGA Proposal** - Under current law, States are required to pay premiums and copayments for certain individuals entitled to Medicare. States believe that this program should be a fully Federal program; i.e., fully funded and administered by the Federal government. Alternatively, States want the Federal government to pay for the benefits as well as for States to administer the QMB program.
- **HCFA Response** - HCFA supports, in principle, the concept of federalizing the QMB program, but budgetary problems preclude adopting such an approach at this time. This issue will be considered within the framework of financing issues under health care reform.

OTHER ISSUES DISCUSSED WITH NGA

Audits and Disallowances

- **NGA Proposal** - States want HCFA to refocus its audit efforts on areas of substantial costs and potential abuse and to seek enactment of Federal legislation to prohibit Federal disallowances for minor technical noncompliance issues.
- **HCFA Response** - HCFA shares the States' concern that the size of a disallowance often seems out of proportion to the significance of the State violation. HCFA would support legislation to improve the audit, disallowance, and State appeal processes.

Proposals for structuring disallowances proportional to the seriousness of the violation were considered by Congress as part of this year's budget reconciliation process but were not included in the final bills of either house. While HCFA supports such legislation in principle, these proposals were seriously flawed in that they would have inadvertently compromised beneficiary protections, they would have given the Secretary and the Departmental Appeals Board shared elements of rule-making and interpreting authority, and they would have required the Federal government to pay for items for which Congress has not authorized funds.

Nursing Facilities / Nurse Aide Training / PASARR

- **NGA Proposal** - States expressed concern regarding the enforcement of nursing home reform regulations for nursing

facilities, the survey and certification process, and the enforcement of the OBRA 87 nursing home reform provisions.

- HCFA Response - HCFA and the NGA agreed to revitalize a technical advisory group (TAG) on institutional long-term care issues. This TAG is composed of State, regional office, and central office representatives; it will examine the States' concerns and propose recommendations for change. Meetings will be regularly scheduled; the first meeting was in July 1993.

State Plan Amendments (SPAs)

- NGA Proposal - States expressed concern regarding regional differences in SPA approvals. They also wanted final approval for all State plan modifications to be no longer than 90 days and for HCFA to be limited to one additional request for information. States also wanted HCFA to presumptively approve SPA's modeled after any SPA having already been approved by HCFA.
- HCFA Response - Given resource constraints it is not possible for HCFA to process all SPAs within one 90-day period without disapproving many of them for lack of information. However, HCFA central and regional offices will work as closely as possible with States to resolve problematic issues in amendments, either prior to submission or during the first 90-day timeframe.

HCFA also agreed to improve the overall SPA approval process, to improve communications with States, and to provide more technical assistance to States.

In response to recommendations to improve consistency in the SPA approval process nationwide, States agreed to inform the involved HCFA regional offices when an SPA modelled after another State's approved plan is submitted. The HCFA regional offices will coordinate better among themselves and with central office to improve consistency in the approval process across all regions.

With regard to presumptive approval of SPAs modelled after another State's program, it was agreed that States, working jointly with the regions, would help to expedite the approval of these types of State programs. Using this approach, it is HCFA's intent to improve interregional consistency on State plan approvals.

Boren Amendment Issues

- NGA Proposal - States want additional guidance on the definition and criteria for adequate reimbursement rates under the Boren Amendment. (This amendment specifies that States must pay hospitals and nursing facilities the costs of an economically and efficiently operated facility.) They believe that without such guidance they are vulnerable to lawsuits based on wide-ranging interpretations of statutory principle by the courts.

Additionally, States want HCFA to define through regulation the terms of the Boren amendment, so as to restore State flexibility in setting rates for hospitals and nursing homes without setting a minimum reimbursement level.

- HCFA Response - HHS supports continued discussions between State and Federal representatives to identify problems with the Boren Amendment and any legislative or other solutions that would provide States with flexibility while ensuring recipient access to needed services.

In response to these proposals, a work group was convened representing the States, the American Public Welfare Association (APWA), NGA, HHS, and OMB to examine policy alternatives. This work group will make policy recommendations to HCFA.

Substance Abuse Treatment

- NGA Proposal - States believe that the Secretary should issue regulations to broaden the Medicaid coverage of alcohol and substance abuse treatment. Under current law, services in settings to treat alcohol or drug dependency are considered mental health services and are subject to statutory Medicaid funding restrictions which apply to "institutions for mental diseases".
- HCFA Response - This issue cannot be addressed independently by HCFA or even HHS. The funding for substance abuse must be considered in the larger context of all the other Federal agencies with responsibility for issues surrounding substance abuse.

The issue of changing Medicaid policy to expand funds for residential substance abuse treatment will be addressed by a recently formed Inter-Departmental Task Force on Substance Abuse. This offers the best approach to developing a coordinated response to the demand for increased coverage of substance abuse treatment, including further evaluation of the role Medicaid should play in any increased Federal

funding of such services.

Technical Assistance / Communications / Regulations

- States wanted improved technical assistance, timely information, and improved timeliness in the publication of regulations. HCFA agreed with these recommendations and is developing strategies to deal with these issues.

Claims Forms

- States wanted HCFA's support of the development of common claims forms, improved electronic claims management systems and automated eligibility processes. HCFA agreed with the States' recommendations and described projects currently under way to deal with many of these issues.

Emergency Transfers

- States wanted HCFA to rescind its interpretation that hospitals in border regions must accept emergency transfers from foreign hospitals of foreign nationals. HCFA has rescinded this policy. However, this does not change the requirement that any individual, whether a United States citizen or not who comes to a Medicare participating hospital that offers emergency services must be appropriately screened and treated or appropriately transferred.

Intergovernmental Funds Transfers

- States wanted HCFA to refrain from developing regulations which would prevent States from financing Medicaid expenditures through intergovernmental funds transfers. There are no plans to develop regulations on this issue.

Personal Care Services

- States wanted the OBRA 90 personal care provisions to be modified so that personal care would not be a mandatory State plan service. HCFA agreed with this recommendation. This issue has been successfully concluded in the omnibus budget package of 1993.

Third Party Liability (TPL)

- The States made extensive recommendations on TPL. HCFA has worked with States, the NGA, and technical advisory groups to clarify State issues and to make changes where possible. In addition, the omnibus budget package of 1993 includes many of TPL improvements which the NGA supports and which the Administration proposed to Congress.

Beneficiary Copayments

- States wanted broader latitude to impose copayments for additional Medicaid services and eligible population groups. Because many of these types of proposals are part of State programs to expand coverage to the uninsured, these proposals should be considered as part of the larger debate on health care reform and the States' role in it.