



DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

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

November 25, 1998

Dear State Medicaid Director:

We have recently become aware that some Medicaid participating nursing facilities are retaining money they are required to refund to residents when Medicaid eligibility is made retroactive. The purpose of this letter is (1) to clarify the Medicaid requirements concerning treatment of private rate payments for nursing facility (NF) services rendered during the period of time the resident's application for Medicaid is being processed and (2) to ask you to actively and aggressively enforce these requirements.

When a person applies for admission to a NF pending Medicaid eligibility or if a resident has spent most of his private funds in the NF and is applying for Medicaid, the NF usually requires a private rate payment until Medicaid eligibility is determined. When Medicaid eligibility is determined, it is most often made retroactive to a time prior to the date that the decision is made. Federal statutory and regulatory requirements mandate that the NF accept Medicaid payment as payment in full when the person's Medicaid eligibility begins. Thus, NFs are required to refund any payment received from a resident or family member for the period of time that the Medicaid eligibility was pending and the resident is determined eligible for Medicaid.

The policies described above reflect the requirements of the following statutory and regulatory provisions:

Section 1919(c)(5)(A)(i)(I) of the Social Security Act requires that a NF must not require individuals applying to reside or residing in the facility to waive their rights to benefits under Medicaid or Medicare.

Section 1919(c)(5)(A)(iii) requires that a NF, in the case of an individual who is entitled to medical assistance for NF services, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under Medicaid, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual or the individual's continued stay in the facility.

- Under 42 CFR 483.12(d), a NF: must not require residents or potential residents to waive their rights to Medicare or Medicaid; must not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility; and in the case of a person eligible for Medicaid, a NF must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility.

It is important that NFs participating in the Medicaid program have an understanding of these admission requirements. Failure to meet these resident rights requirements could result in an enforcement action against the nursing home. We trust that you will relay this important information to all participating NFs in your State and assure that they comply with these requirements. If you have any questions concerning this letter, please contact your HCFA Regional Office.

Sincerely,

/s/

Sally K. Richardson

Director

cc: All HCFA Regional Administrators

All HCFA Associate Regional Administrators for Medicaid and State Operations

Lee Partridge American Public Human Services Association

Joy Wilson National Conference of State Legislatures