DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing
Administration

Refer to: DMCD:FM12

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CHICAGO REGIONAL STATE LETTER NO: 15-92

SUBJECT: Accounts Receivable Financing Arrangements - Information

This letter sets out the Health Care Financing Administration (HCFA) policy on the issue of whether accounts receivable financing arrangements are permissible under the Medicaid program. Under these arrangements, a financing entity would sell commercial paper or other notes to private parties and use the proceeds to advance funds to providers based on pledge or sale of its accounts receivables to the entity.

Accounts receivable financing arrangements are consistent with the Medicaid law and regulations if certain conditions exist. Primary among those are that Medicaid payments must be sent directly to the provider at its own address, not that of a bank, and negotiated by and in the control of the provider before being turned over to the financing institution. Direct payment to the financing institution is not permitted.

In stating that a financing program is consistent with the Medicaid provisions, we take no position on whether the financing institution acquires a valid ownership or security interest in the receivables under that financing program. That is a matter of State law. We are simply saying that HCFA will take no action against the provider, and will not require the State to take any action against the provider for entering into the financing program.

The question has been raised as to whether the Medicaid payments could be made directly to a State financing agency under Section 1902(a)(32) of the Social Security Act (the Act). While this provision permits assignment of claims to a governmental entity, it does not do so unconditionally. The effect of other requirements of the Medicaid law and regulations must be considered as well. For example, Section 1902(a)(4) of the Act calls for the State Medicaid plan to provide for methods of administration that are found by the Secretary to be necessary for the proper and efficient administration of the plan. Section 1903(a)(1) of the Act provides for Federal financial participation (FFP) for services to be based on payments made by the State and for FFP to be made available only to pay for the cost of covered services under the plan and for necessary

Medicaid administrative costs, and for no other purposes. HCFA has determined that direct Medicaid payment to a State financing agency is inconsistent with these provisions. Furthermore, indirect payment through the provider is inconsistent with these provisions unless certain showings, described below, are made.

Under both Medicare and Medicaid, the law provides for direct payment by the program to providers, but not to financing entities. In general, under HCFA policy, providers are free to engage in any financing arrangements they consider necessary, so long as Medicare and Medicaid payments are sent directly to the provider. But there are special, additional considerations that must be taken into account with respect to Medicaid accounts receivable financing where the financing agency is a governmental entity. These stem from the fact that funds from one State agency would be used to pay another, even if only indirectly. Because of this, there needs to be the strongest possible assurances that the Medicaid program is protected from potential abuse. It is for this reason that showings must be made to demonstrate conclusively that the arrangement does not: constitute a conflict of interest, result in an unnecessary administrative burden to the State or HCFA, result in a restricted financing market for providers who do not wish to participate under the financing arrangement, and is consistent with the proper and efficient administration of the State Medicaid plan.

For example, if the State financing agency pays out a total amount in interest to investors, payments to providers, and reasonable administrative expenses, that is less than the amount paid by the Medicaid agency for the claims, it makes a profit under the financing arrangement. This profit serves to reduce the State expenditures for Medicaid subject to FFP and could be diverted to uses other than Medicaid, which would violate Section 1902(a)(1) of the Act. Auditing the financing arrangement to detect such profit would impose an undue administrative burden on HCFA and would be inconsistent with the proper and efficient administration required under Section 1903(a)(4) of the Act.

Another example is the potential for conflicts of interest and perverse incentives to arise from the arrangement. If a Medicaid State agency were to delay its Medicaid payments to its providers, those providers would have an incentive to obtain financing from the State financing agency. There could be a strong incentive for a State Medicaid agency to do this, particularly in the case where the State was earning a profit under the financing arrangement.

In light of the above concerns with respect to State agency involvement in Medicaid accounts receivable financing arrangements, any proposal involving a State financing agency must be structured in a way that would satisfactorily resolve all the pertinent issues. If you receive any inquiry or request which involves a State financing entity, you are strongly urged to seek a HCFA advisory opinion.

If you have any question, please contact the Accountant-in-Charge assigned to your State.

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Division of Medicaid

Originating Component: **Financial Management Branch**
Division of Medicaid