PT 14-98

State of Maryland

**MEDICAL CARE POLICY ADMINISTRATION**

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

201 WEST PRESTON STREET • BALTIMORE, MARYLAND 21201

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Governor

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MARYLAND MEDICAL ASSISTANCE PROGRAM
HOME HEALTH TRANSMITTAL NO. 32

February 19, 1998

TO: Home Health Agency Administrators

FROM: Joseph M. Millstone, Director
Medical Care Policy Administration

<u>NOTE</u>: Please ensure that appropriate staff members in your organization are informed of the contents of this transmittal.

SUBJECT: Surety Bond Requirement

Section 4724(b) of the Balanced Budget Act of 1997 imposes a new requirement for home health agencies to obtain surety bonds. This provision prohibits payment of federal Medicaid matching funds for home health services unless the home health agency or organization provides the State Medical Assistance Program with a surety bond. The purpose of this transmittal is to clarify the process by which home health agencies must provide $50,000 or more as a surety bond in order to continue receiving payments from the Maryland Medical Assistance Program. This bond is in addition to any bond which must be secured as a condition of participation in the Medicare Program.

The minimum amount of the bond must be $50,000, but may be higher depending on the amount of Medicaid payments you receive. This new requirement will be incorporated into already existing provider agreements as an addendum to the agreement. Please sign and return one copy of the attached provider agreement addendum.

By February 27, 1998, each participating home health agency must obtain a surety bond (and furnish to Medical Assistance a copy of such surety bond) that meets the following requirements:

- **Initial term:** The bond must be effective January 1,1998 through the end of the home health agency's fiscal year. All subsequent terms of the bond would be concurrent with your fiscal year and should be submitted to Medicaid not later than 30 days before your next fiscal year start.

- **Parties to the bond:** The surety bond must name the home health agency as Principal, the Maryland Medical Assistance Program as Obligee, and the surety company (and its heirs, executors, administrators, successors and assignees, jointly and severally) as Surety.

- **Amount of the bond:** The amount of the surety bond must be the greater of (1) $50,000 or (2) 15% of the payments made to the home health agency by Medicaid for home health services provided during the State's fiscal year ended June 30, 1997. In the very near future, each home health agency will receive an individual notice advising it of the amount of bond it must initially provide based on Medicaid payments received during fiscal year 1997. All agencies should, however, immediately begin contacting authorized surety companies, and begin the application process for a bond.

- **Surety Company:** The surety company must be certified by the U.S. Department of the Treasury in accordance with 31 U.S.C. 9304 to 9308 and 31 CFR parts 223, 224 and 225 as an acceptable surety on federal bonds and their Certificate must have neither expired nor been revoked.

- **Bond guarantee:** The bond must guarantee that, upon written demand by the Medicaid agency to the Surety for payment under the bond, and the Medicaid Program furnishing to the Surety sufficient evidence to establish the Surety's liability under the bond, the Surety will timely pay the Medicaid agency the amount so demanded, up to the stated amount of the bond.

- **Surety liability:** The bond must provide that the Surety's liability for uncollected Medicaid overpayments is not limited to the initial term of the bond and will be based on overpayments that arise from Medicaid payments that are made by the Medicaid agency to the home health agency during the term of the bond, regardless of when the overpayments are identified by the Medicaid agency or when the overpayments become uncollected overpayments. In addition, the bond must provide that the Surety's liability to the Medicaid agency is not extinguished by any of the actions referred to in 42 CFR §441.16(h)(3) (copy attached) and the bond must also provide that claims against the bond may be brought by the Medicaid agency or by an agent that the Medicaid agency designates.

A 30-day extension of the February 27, 1998 deadline for submission of your surety bond may be requested if you can show good cause why you have not been able to obtain the bond. In order for an extension to be granted, you must be able to demonstrate that you have applied to at least three surety bond companies and have been unable to obtain the bond. Failure to request and receive approval for an extension may result in termination of your participation in the Maryland Medical Assistance Program.

If a home health agency changes ownership, the prior owner's surety bond cannot be assigned to the new owner. The new owner must obtain his/her own surety bond before the Medicaid Program will issue a provider number to the new entity.

If you choose to discontinue participation in the Maryland Medical Assistance Program as a result of this new requirement, please notify us in writing **IMMEDIATELY**. This notification should be mailed to the following:

Staff Specialist for Home Health
Medical Care Policy Administration
Room 119
201 West Preston Street
Baltimore, Maryland 21201

Should you have any questions regarding the above, please contact the Staff Specialist for Home Health at 410-767-1474.

Attachments

the requirements of this section if, during the preceding 5 years, the HHA has not had any uncollected overpayments.

(e) *Parties to the bond.* The surety bond must name the HHA as Principal, the Medicaid agency as Obligee, and the surety company (and its heirs, executors, administrators, successors and assignees, jointly and severally) as Surety.

(f) *Authorized Surety and exclusion of surety companies.* An HHA may obtain a surety bond required under this section only from an authorized Surety.

(1) An authorized Surety is a surety company that—

(i) Has been issued a Certificate of Authority by the U.S. Department of the Treasury in accordance with 31 U.S.C. 9304 to 9308 and 31 CFR parts 223, 224, and 225 as an acceptable surety on Federal bonds and the Certificate has neither expired nor been revoked;

(ii) Has not been determined by the Medicaid agency to be an unauthorized Surety for the purpose of an HHA obtaining a surety bond under this section; and

(iii) Meets other conditions, as specified by the Medicaid agency.

(2) The Medicaid agency may determine that a surety company is an unauthorized Surety under this section—

(i) If, upon request by the Medicaid agency, the surety company fails to furnish timely confirmation of the issuance of, and the validity and accuracy of information appearing on, a surety bond that an HHA presents to the Medicaid agency that shows the surety company as Surety on the bond;

(ii) If, upon presentation by the Medicaid agency to the surety company of a request for payment on a surety bond and of sufficient evidence to establish the surety company's liability on the bond, the surety company fails to timely pay the Medicaid agency in full the amount requested up to the face amount of the bond; or

(iii) For other good cause.

(3) The Medicaid agency must specify the manner by which public notification of a determination under paragraph (f)(2) of this section is given and the effective date of the determination.

(4) A determination by the Medicaid agency that a surety company is an unauthorized Surety under paragraph (f)(2) of this section—

(i) Has effect only within the State; and

(ii) Is not a debarment, suspension, or exclusion for the purposes of Executive Order No. 12549 (3 CFR 1986 Comp., p. 189).

(g) *Amount of the bond.*

(1) *Basic rule.* The amount of the surety bond must be $50,000 or 15 percent of the annual Medicaid payments made to the HHA by the Medicaid agency for home health services furnished under this subchapter for which FFP is available, whichever is greater.

(2) *Computation of the 15 percent: Participating HHA.* The 15 percent is computed by the Medicaid agency on the basis of Medicaid payments made to the HHA for the most recent annual period for which information is available as specified by the Medicaid agency.

(3) *Computation of 15 percent: An HHA that seeks to become a participating HHA by obtaining assets or ownership interest.* For an HHA that seeks to become a participating HHA by purchasing the assets or the ownership interest of a participating or formerly participating HHA, the 15 percent is computed on the basis of Medicaid payments made by the Medicaid agency to the participating or formerly participating HHA for the most recent annual period as specified by the Medicaid agency.

(4) *Computation of 15 percent: Change of ownership.* For an HHA that undergoes a change of ownership (as "change of ownership" is defined by the State Medicaid agency) the 15 percent is computed on the basis of Medicaid payments made by the Medicaid agency to the HHA for the most recent annual period as specified by the Medicaid agency.

(5) *An HHA that seeks to become a participating HHA without obtaining assets or ownership interest.* For an HHA that seeks to become a participating HHA without purchasing the assets or the ownership interest of a participating or formerly participating HHA, the 15 percent computation does not apply.

(6) *Exception to the basic rule.* If an HHA's overpayment in the most recent annual period exceeds 15 percent, the State Medicaid agency may require the HHA to secure a bond in an amount up to or equal to the amount of the overpayment, provided the amount of the bond is not less than $50,000.

(h) *Additional requirements of the surety bond.* The surety bond that an HHA obtains under this section must meet the following additional requirements:

(1) The bond must guarantee that, upon written demand by the Medicaid agency to the Surety for payment under the bond and the Medicaid agency furnishing to the Surety sufficient evidence to establish the Surety's liability under the bond, the Surety will timely pay the Medicaid agency the amount so demanded, up to the stated amount of the bond.

(2) The bond must provide that the Surety's liability for uncollected overpayments is based on overpayments that arise from Medicaid payments that are made by the Medicaid agency to the HHA during the term of the bond, regardless of when the overpayments are determined by the Medicaid agency or when the overpayments become uncollected overpayments.

(3) The bond must provide that the Surety's liability to the Medicaid agency is not extinguished by any of the following:

(i) Any action by the HHA or the Surety to terminate or limit the scope or term of the bond unless the Surety furnishes the Medicaid agency with notice of such action not later than 10 days after the date of notice of such action by the HHA to the Surety, or not later than 60 days before the effective date of the action by the Surety.

(ii) The Surety's failure to continue to meet the requirements of paragraph (f)(1) of this section or the Medicaid agency's determination that the surety company is an unauthorized surety under paragraph (f)(2) of this section.

(iii) Termination of the HHA's provider agreement described under § 431.107 of this subchapter.

(iv) Any action by the Medicaid agency to suspend, offset, or otherwise recover payments to the HHA.

(v) Any action by the HHA to—

(A) Cease operation;

(B) Sell or transfer any assets or ownership interest;

(C) File for bankruptcy; or

(D) Fail to pay the Surety.

(vi) Any fraud, misrepresentation, or negligence by the HHA in obtaining the surety bond or by the Surety (or by the Surety's agent, if any) in issuing the surety bond, except that any fraud, misrepresentation, or negligence by the HHA in identifying to the Surety (or to the Surety's agent) the amount of Medicaid payments upon which the amount of the surety bond is determined shall not cause the Surety's liability to the Medicaid agency to exceed the amount of the bond.

(vii) The HHA's failure to exercise available appeal rights under Medicaid or to assign such rights to the Surety (provided the Medicaid agency permits such rights to be assigned).

(4) The bond must provide that actions under the bond may be brought by the Medicaid agency or by an agent that the Medicaid agency designates.

(i) *Submission date and term of the bond.*

(1) Each participating HHA that is not exempted by paragraph (d) of this

**ADDENDUM**

**AGREEMENT BETWEEN**
**MARYLAND STATE DEPARTMENT OF HEALTH AND MENTAL HYGIENE**
**AND THE PROVIDER**
**FOR PARTICIPATION IN THE TITLE XIX**
**HOME HEALTH SERVICES PROGRAM**

**This addendum to the provider agreement previously entered into between the Maryland State Department of Health and Mental Hygiene and Home Health Agency outlines additional responsibilities of the provider. The parties agree that all provisions of the original agreement remain in full force** and effect and this addendum is incorporated into the original agreement.

THE PROVIDER FURTHER AGREES:

A. To obtain a surety bond (and furnish to Medical Assistance a copy of such surety bond) that meets the following requirements:

(1) **Term:** Not later than 30 days before the home health agency's fiscal year, effective for a term concurrent with the home health agency's fiscal year.

(2) **Parties to the bond:** The surety bond must name the home health agency as Principal, the Maryland Medical Assistance Program as Obligee, and the surety company (and its heirs, executors, administrators, successors and assignees, jointly and severally) as Surety.

(3) **Amount of the bond:** The amount of the surety bond must be the greater of (1) $50,000 or (2) 15% of the payments made to the home health agency by Medicaid for home health services provided for the provider's most recent annual period for which data are

available.

(4) Surety Company: The surety company must be certified by the U.S. Department of the Treasury in accordance with 31 U.S.C 9304 to 9308 and 31 CFR parts 223, 224, and 225 as an acceptable surety on federal bonds and their Certificate must have neither expired nor been revoked

(5) Bond guarantee: The bond must guarantee that, upon written demand by the Medicaid agency to the Surety for payment under bond, and the Medicaid Program furnishing to the Surety sufficient evidence to establish the Surety's liability under the bond Surety will timely pay the Medicaid agency the amount so demanded, up to the stated amount of the bond.

(6) Surety liability: The bond must provide that the Surety's liability for uncollected Medicaid overpayments is not limited to the initial term of the bond and will be based on overpayments that arise from Medicaid payments that are made by the Medicaid agency to the home health agency during the term of the bond, regardless of when the overpayments are identified by the Medicaid agency or when the overpayments become uncollected overpayments In addition, the bond must provide that the Surety's liability to the Medicaid agency is not extinguished by any of the actions referred to in 42 CFR, §441.16(h)(3) and the bond must also provide that claims against the bond may be brought by the Medicaid agency or by an agent that the Medicaid agency designates.

NAME OF HOME HEALTH PROVIDER

ADDRESS

PROVIDER NUMBER

AUTHORIZED SIGNATURE

TITLE

DATE

STATE DEPARTMENT OF HEALTH AND MENTAL HYGIENE

AUTHORIZED SIGNATURE

TITLE

DATE

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

NAME DATE ______________________

TITLE