

TO: Health Advocates, Consumers and Other Interested Parties
FR: Claudia Schlosberg, National Health Law Program
DT: December 5, 1997

RE: SSI KIDS AND MEDICAID

On November 13, 1997, HCFA sent a letter to State Medicaid Directors providing guidance on how to implement Section 4913 of the Balanced Budget Act. Section 4913 provides that children who were receiving SSI payments on August 22, 1996 and who, but for the passage of the new disability definition would continue to be paid such benefits, continue to be eligible for Medicaid. In effect, Section 4913 deemed these children eligible for Medicaid using the old Zebley standard for the SSI program. The actual text of the letter is available on HCFA's website: www.hcfa.gov/medicaid/bbakids.htm .

The letter and attachment are somewhat confusing but, if read carefully, make clear:

1. Section 4913 children are to be treated as mandatory categorically eligible for Medicaid.
2. Once it is determined that a child is covered under Section 4913, beginning with SSI terminations on July 1, 1997 or later, the State must retain the child on the Medicaid roles.
3. There should have been no break in Medicaid coverage for children who lost SSI as a result of the welfare law. If a child was illegally terminated from Medicaid, the State must reopen the file and reinstate the child's Medicaid. Note: States cannot require children who have been illegally terminated to reapply for Medicaid in order to reinstate their benefits.
4. States are NOT required to redetermine the eligibility of Section 4913 children at this time but should redetermine eligibility based on the policies set forth in 42 CFR 435.916 (which provide for a review with respect to circumstances that may change at least every twelve months).

NOTE, however, that under 42 C.F.R. Section 435.916, the State agency can presume that a recipient's disability is continuing until the review team under Section 435.541 determines that a recipient's disability no longer meets the definition of disability contained in the State's plan. Under Section 435.541, the review team determines whether and when reexaminations will be necessary for periodic redeterminations of eligibility "using the principles set forth" under Social Security regs (20 C.F.R. Section 416.989 and 416.990). Although these regs, as amended by the welfare law, require continuing disability reviews "not less frequently than once every 3 years" for children who have an impairment which is likely to improve, PRWORA, Section 212(a), arguably the review team has discretion to review cases less frequently. In other words, State Medicaid agencies have at least three years before they must undertake a disability review for a child receiving Medicaid under Section 4913, and may have more time. Such interpretation greatly reduces the administrative and financial burden on states and promotes continuing coverage for children with disabilities eligible to receive Medicaid under Section 4913.

5. To lessen the administrative burden on states, HCFA is permitting states to place Section 4913 children in a mandatory poverty level group, unless the amount, duration or scope of eligibility or services is less than that provided to SSI eligible individuals.

Note, giving states the option to determine eligibility under alternative criteria could result in children eligible under Section 4913 losing benefits in subsequent years. For example, because of different budgeting methodology used in determining income under the 100% poverty standard and under SSI, a child found eligible for Medicaid under the 100% poverty standard could lose eligibility if there was a small increase in family income. However, that same child could be eligible under SSI standards which only deem a portion of the family income to the child with a disability.

6. To help states identify Section 4913 children, SSA is making available, upon request, lists of children whose cash benefits terminated effective July 1, 1997 or who lose such benefits after that date due to a finding, including a finding of non-cooperation with the disability redetermination process, that the child does not meet the definition of disability enacted by section 211 of the welfare law. To request a list, states must contact their SSA Regional Commissioner. The lists will be updated monthly.

Note: Although HCFA is directing states to take affirmative steps to identify Section 4913 children and is facilitating the exchange of information between SSA and State Medicaid

agencies, advocacy will need to monitor state activity to insure compliance with HCFA policy.

If you have questions, comments or information to share about developments in your state regarding Medicaid and the implementation of changes affecting children who have lost or will lose SSI, please contact Claudia Schlosberg at schlosberg@healthlaw.org.