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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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January 26, 1976

B-104031(3)



The Honorable John E. Hoss
Chairman, Subcommittee on Oversight
and Investigations
Committee on Interstate and
Foreign Commerce
House of Representatives

H. 2305

Dear Mr. Chairman:

This is in response to your letter dated October 31, 1975, and also to confirm information presented orally to your staff on December 18, 1975, regarding the implementation of section 1903(g) of the Social Security Act, 42 U.S.C. § 1396b(g)(1) (Supp. IV, 1974) by the Department of Health, Education, and Welfare (the Department). 22

Section 1903(g) was added by section 207(a)(1) of the Social Security Amendments of 1972, Public Law 92-603, 86 Stat. 1379. This section provides generally that after an individual has received care as an inpatient in a hospital, skilled nursing facility, or intermediate care facility beyond 60 days, or in a hospital for mental diseases beyond 90 days, during any fiscal year, the Federal medical assistance percentage with respect to amounts paid for any such care "shall be decreased" by 33 1/3 percent unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary of the Department that, with respect to each calendar quarter for which the State submits a request for payment for amounts paid for long-term care, there is in operation in the State an effective program of control over utilization of such institutional services.

Section 1903(g)(2) provides that the Secretary shall, as part of his validation procedures under this subsection, conduct sample onsite surveys of private and public institutions in which recipients of medical assistance may receive care and services under an approved State plan.

The Commissioner of the Medical Services Administration, Social and Rehabilitation Service of the Department issued an Information Memorandum dated June 8, 1975, to State agencies administering

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approved medical assistance programs advising them of their utilization review responsibilities in connection with the Social Security Amendments of 1972. This memorandum stated that "a satisfactory showing" by the State that it meets the requirements of section 207 must be evidenced by a certification to that effect by the head of the State Medicaid agency each calendar quarter.

The Acting Administrator of the Department's Social and Rehabilitation Service issued an Information Memorandum dated August 22, 1974, to State agencies administering approved Medicaid plans further advising them of the requirements, timing, methods and criteria for the Department's evaluation of State adherence to section 1903(g). This memorandum stated that:

"To avoid imposition of the 33 1/3 percent reduction in FFP [Federal Financial Participation] for patients in institutions over 60 or 90 days, at the beginning of each quarter the State must submit to the SRS Regional Commissioner a showing that it has in place an effective system of control over utilization of institutional services. Until further notice, a statement from the State agency responsible for the administration of the plan that it meets the following UC [Utilization Control] requirements is acceptable as a satisfactory showing...."

We visited the Department's regional offices in Region IV (Atlanta) and Region V (Chicago) on December 17, 1975, and November 20, 1975, respectively, to determine whether the ten required quarterly certifications for fiscal years 1974 and 1975 and the first two quarters of fiscal year 1976 for the applicable States were in the regional office files. We determined that 1 to 6 of the 10 required certifications were not in the Department's regional office files for 13 of the 14 States in the 2 regions. (See enclosures I and II.)

We reviewed selected States' files to determine whether the missing certifications were in the States' files. A copy of the missing certification for Tennessee was in the State's files. Copies of the five missing certifications for Georgia were not in the State's files.

On January 13 and 14, 1976, after the release of your December 18, 1975, letter to the Secretary on this subject we revisited the Department's regional offices in Atlanta and Chicago. Regional officials informed us that some of the missing certifications had been located. They told us the certifications were misfiled at the time of our previous review. However, we determined that at least 23 of the certifications which were previously not in the regional office files were in the files on January 14, 1976, because the States had, in

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December 1975, submitted certifications which had not been submitted for prior quarters.

Our July 3, 1975, letter to you regarding section 1903(g)(1) stated that, in our view, in the absence of the required showing by a State, the Secretary has no choice but to decrease the Federal medical assistance percentage by 33 1/3 percent for applicable long-term care cases. Accordingly, it is our opinion that the Secretary should have reduced applicable long-term care funds for those quarters for which the States did not submit certifications of satisfactory showings of compliance with section 1903(g).

We have since been informed by a Departmental official that all certifications have been submitted by all States in Regions IV and V. However, since many of the certifications were not submitted by the States within the deadlines established by the Department, the States do not appear to have complied with the Department's requirements for a satisfactory showing. Therefore, funds must be reduced until such time as the Secretary determines that the States involved have made a satisfactory showing of compliance with section 1903(g). While we believe that the acceptance of significantly late certifications without obtaining specific proof of compliance is of dubious probative value, the law only requires that a State's showing be satisfactory to the Secretary. Thus, it appears that the Secretary legally could accept the late certifications as a satisfactory showing.

In this regard we recognize that the Department's regulations which became effective July 1, 1975, require that the quarterly satisfactory showing must include a description of the methods used for assuring that records are available which show the number of days each individual has received institutional services.

While we do not believe this requirement by itself provides enough additional information to improve the basis on which the Secretary makes his findings of compliance, effective as of July 1, 1975, those certifications covering quarters subsequent to July 1, 1975, whether or not they were filed timely, which do not contain the newly required information may not be accepted by the Secretary as satisfactory showings.

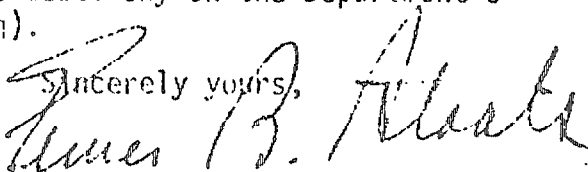
In addition to the above, we would like to point out two additional matters regarding the implementation of section 1903(g) which are of concern to us. First, we believe the length of time being taken by the Department to complete the validation review process and make appropriate reductions from States not in

compliance with the requirements of section 1903(g) is unreasonable. The Department started making reviews of State compliance in the first half of fiscal year 1974, but as of January 20, 1976, the Secretary had not reduced the funds awarded to any State for any quarter of fiscal year 1974. The Acting Director of the Division of Utilization Control of the Department's Medical Services Administration informed us that present plans call for a review of fiscal year 1975 compliance starting in March 1976. However, he stated that prior to the start of the review of States' compliance for fiscal year 1975 the Department's General Counsel would have to approve the division's plans for the review and this might delay the start of the review.

Second, the statute provides that in the absence of satisfactory showing by the States, the Federal medical assistance percentage shall be decreased by one-third with respect to amounts paid for care furnished to an individual who is an inpatient in a hospital, skilled nursing facility or intermediate care facility for more than 60 days or in a hospital for mental diseases for more than 90 days (whether or not such days are consecutive) in the same fiscal year. This would require a review of the records of each person receiving Federal medical assistance before the exact amount of the reduction in Federal payments to the States may be calculated. The Subcommittee may wish to consider amending this provision to provide for a less complex and less burdensome procedure for calculating this reduction.

We believe that in order to assure that the Secretary (1) insures compliance with section 1903(g) in a reasonable timeframe and (2) obtains a more meaningful showing of compliance with section 1903(g) from the States, the Subcommittee may also want to consider drafting legislation to amend the law to impose a specific timeframe upon the Secretary and to prescribe the information which must be included, as a minimum, in the States' showings. We would be pleased to assist the Subcommittee staff in drafting proposed changes in the legislation on these matters.

As agreed with members of the Subcommittee staff we will further discuss the other aspects of your request after your Subcommittee conducts hearings scheduled for January 26, 1976, at which time the Secretary is expected to present testimony on the Department's implementation of section 1903(g).

Sincerely yours,


Comptroller General
of the United States

COMPLIATION OF STATE CERTIFICATIONS
OF COMPLIANCE WITH SECTION 1903(g)
OF THE SOCIAL SECURITY ACT NOT LOCATED
IN ATLANTA NEW REGIONAL OFFICE FILES

AS OF DECEMBER 17, 1975

<u>State</u>	<u>Fiscal year</u> <u>1974</u> <u>(4 Quarters)</u>	<u>Fiscal year</u> <u>1975</u> <u>(4 Quarters)</u>	<u>Fiscal year</u> <u>1976</u> <u>(2 Quarters)</u>	<u>Total</u> <u>certifications</u> <u>missing</u> <u>(10 Quarters)</u>
Florida	-	-	2	2
Kentucky	1	3	2	6
Mississippi	2	1	-	3
North Carolina	-	-	2	2
South Carolina	-	-	2	2
Tennessee	-	-	1a/	1
Georgia	-	3	2	5
Alabama	-	-	-	-
Total				21

a/We located the missing certification for Tennessee in the State's files.

COMPILATION OF STATE CERTIFICATIONS
OF COMPLIANCE WITH SECTION 1903(g)
OF THE SOCIAL SECURITY ACT NOT LOCATED
IN CHICAGO HEW REGIONAL OFFICE FILES
AS OF NOVEMBER 20, 1975

<u>State</u>	<u>Fiscal year 1974 (4 Quarters)</u>	<u>Fiscal year 1975 (4 Quarters)</u>	<u>Fiscal year 1976 (2 Quarters)</u>	<u>Total certification missing (10 Quarters)</u>
Minnesota	3	1	-	4
Illinois	3	1	-	4
Indiana	4	1	-	5
Wisconsin	3	1	-	4
Michigan	4	1	-	5
Ohio	3	2	1	<u>6</u>
Total				28

UTILIZATION REVIEW PENALTIES
SOCIAL AND REHABILITATION SERVICE
DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE

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DIGEST

--Section 1903(g) of the Social Security Act requires that States have an effective program over utilization of inpatient care provided in a hospital, skilled nursing facility, or intermediate care facility. Failure to comply with this requirement is supposed to result in the loss of one-third of the Federal medical percentage for all inpatient care over 60 days or in a hospital for mental disease beyond 90 days. States must submit quarterly certifications that they have complied with the requirement.

--The wording of the Act permits the Secretary of HEW to accept as timely and valid certifications unverified statements of compliance filed months after the quarters in question are over.

--HEW's review of the States' compliance is not proceeding in a timely manner.

--Administration of the penalty provision is complex and burdensome and amending the provision could relieve this problem.

--GAO recommended that legislation be drafted to specify the timeframe for and minimum information content of the quarterly certifications already required by the Act.

UTILIZATION REVIEW PENALTIES
SOCIAL AND REHABILITATION SERVICE
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