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Beverly Eaves Perdue, Governor

Lanier M. Cansler, Secretary

July 10, 2009

The Honorable Bob England, M.D., Chairman
Appropriations Subcommittee on Health and Human Services
North Carolina General Assembly
Room 303, Legislative Office Building
Raleigh, NC 27603

Dear Representative England:

Section 10.10(d) of S.L. 2008-107 (House Bill 2436), "Performance Bonds and Visits," required DHHS to submit a report to the NC General Assembly on addressing "the number of performance bonds required, the classes of providers required to purchase a performance bond, the number of waivers or limitations granted, and the classes of providers granted a waiver or limitation from the performance bond requirements." It is my pleasure to submit the report at this time.

Please direct all questions concerning this report to Angela Floyd, Assistant Director for Recipient and Provider Services, in the Division of Medical Assistance at (919) 855-4050 or email her at Angela.Floyd@ncmail.net.

Sincerely,

Lanier M. Cansler

LMC:af

Attachment

cc: Allen Feezor
Dan Stewart
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Legislative Library (2)

NCGA Mandated Report SL 2008-107 10.10(d)
Performance Bonds and Visits

As of January 13, 2009, the Draft Temporary Rule for Performance Bonds and the Fiscal Impact Analysis for Performance Bonds have been completed and are under review by DMA Budget Management Section.

By January 23, 2009, the Temporary Rule for Performance Bonds and the Fiscal Impact Analysis will be sent to DMA Rule Coordinator to begin the temporary rule making process. The full temporary rule making process may take anywhere from 6 to 24 months to complete.

Upon ratification of the temporary rule, the following classes of providers will be required to purchase a performance bond as a condition of participation in the Medicaid program.

1. **Non-licensed providers or non-Medicare certified providers** shall obtain a performance bond annually for five years. In the first year, the provider shall obtain a performance bond in the amount of twenty thousand dollars ($20,000) or an executed letter of credit issued by a financial institution in the amount of twenty thousand dollars ($20,000). In subsequent years, the provider shall obtain a performance bond equal to the actual billing level for the most recent calendar year of participation, not to exceed one hundred thousand dollars ($100,000) or an executed letter of credit issued by a financial institution.

   See Table 1: Types of non-licensed or non Medicare certified providers for SFY 2004 through SFY 2007

   DMA estimates 2,314 providers per year will be required to purchase a performance bond or letter of credit.

2. **Licensed providers[1] or Medicare certified providers[2]** will not be required to post a bond or executed letter of credit unless:
   a. The health care provider is the subject of a disciplinary action taken against any business or professional license held in this state or any other state;
   b. The health care provider has been subject to a civil monetary penalty levied against their agency by Medicare, Medicaid or other State or Federal Agency or Program;
   c. The health care provider has been subject to withhold, suspension and/or exclusion from Medicare or Medicaid or other State or Federal Agency or Program in any state;
   d. The health care provider currently owes money to Medicare or Medicaid;
   e. The health care provider can not reasonably demonstrate that they have assumed liability and are responsible or paying the amount of any outstanding recoveries to

the Medical Assistance Program as the result of any sale, merger, consolidation, dissolution or other disposition of the health care provider or person; or

f. The Secretary of the Department of Health and Human Services determines that it is in the best interest of the Medical Assistance Program to do so.

Upon ratification of the temporary rule, the Department shall provide written notice to the affected provider of the findings upon which its action to impose a bond is based and shall include the performance bond requirements and conditions under which waiver or limitations may apply.

The Department may waive or limit the performance bond requirements based on the following:

1. The dollar amount of monthly Medicaid billings by the provider or type of provider.
2. The length of time a provider has been licensed, endorsed, certified, or accredited in this State to provider services.
3. The length of time a provider has been enrolled to provider Medicaid services in the State.
4. The provider's demonstrated ability to ensure adequate recordkeeping, staffing and services.
5. The need of the Department of Health and Human Services to ensure adequate access to care.

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[1] Licensed providers are defined as: 1) providers with a license, certification, registration or permit issued by the governing board regulating a human service profession and 2) facilities licensed by the NC Division of Health Service Regulation (DHSR).

[2] Medicare certified providers are defined as providers and suppliers who are subject to Federal health care quality standards and are certified by the Centers for Medicare and Medicaid Services (CMS).

Table 1

Types of non-licensed or non Medicare certified providers for SFY 2004 through SFY 2007

Service	# of Enrolled Providers - SFY 04	# of Enrolled Providers - SFY 05	Δ	# of Enrolled Providers - SFY 06	Δ	# of Enrolled Providers - SFY 07	Δ	Average Δ	"re-worked"
Ambulance	283	268	**-15**	267	**-1**	269	**2**	**-5**	2
At Risk Case Management	95	94	**-1**	95	**1**	95	**0**	**0**	1
Birthing Centers	3	2	**-1**	2	**0**	3	**1**	**0**	1
Children Developmental Service Agency	23	23	**0**	21	**-2**	20	**-1**	**-1**	0
Community Alternative Program	1,245	1,391	**146**	1,600	**209**	1,626	**26**	**127**	127
Community Intervention Services	1	349	**348**	4,812	**4,463**	6,456	**1,644**	**2,152**	2,152
HIV Case Management	150	135	**-15**	128	**-7**	135	**7**	**-5**	7
Health Department	189	187	**-2**	184	**-3**	184	**0**	**-2**	0
Laboratory Free Standing	103	96	**-7**	95	**-1**	99	**4**	**-1**	0
Local Management Entity	177	162	**-15**	138	**-24**	97	**-41**	**-27**	0
Maternal & Child Care Services	4	4	**0**	4	**0**	3	**-1**	**0**	0
Pharmacy	2,110	2,095	**-15**	2,163	**68**	2,180	**17**	**23**	23
Portable X-ray	14	20	**6**	19	**-1**	16	**-3**	**1**	1
								2,262	2,314

Note: enrolled providers are defined to be all providers who were active between effective date and end date (i.e., Eligibility Effective date <= 6/30/2007 and Eligibility End date >= 7/1/2006)

Note: If the type of performance bond is not considered high risk the provider should be able to qualify for a preferred rate of 1% to 3% of the performance bond amount. If the type of performance bond is considered high risk a preferred rate of up to 20% may apply. 1% of $20,000 = $200, 3% of $20,000 = $600 and 20% of $20,000 = $4,000

Bank Letter of Credit cost is generally 1% of the contract amount. For instance, 1% of $20,000 = $200.