

# American Association of Birth Centers

*America's Birth Center Resource*



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March 15, 2013

The Honorable Kathleen Sebelius  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Ave. SW  
Washington DC 20201  
[Kathleen.Sebelius@hhs.gov](mailto:Kathleen.Sebelius@hhs.gov)

Re: CMS and States Failure to Implement Section 2301 of the PPACA:  
Freestanding Birth Center Services and Section 1932 of SSA

Dear Madam Secretary:

I am writing to you on behalf of the American Association of Birth Centers (AABC), the national organization of freestanding birth centers. **The Affordable Care Act required that States provide Medicaid reimbursement for the birth center facility service fees and the professional fees of the birthing attendant.** [Act (P.L. 111-148) as amended by the Health Care and Education Act of 2010 (P.L. 11-152), Title II, Subtitle D, Section 2301]

This section of the ACA added freestanding birth center (“FSBC”) services, and the professional services of birth attendants in birth centers, as a new category of “medical assistance” under section 1905(a) of the Act [42 U.S.C. §1396d(a)(28)]. This new section also included FSBC services as one of the services mandated by section 1902(a)(10)(A) for Medicaid-enrolled pregnant women [42 U.S.C. §1396a(a)(10)(A)]. **As of today, this mandate has been implemented correctly in fewer than half the states.** In fact, although it is now nearly three years since the ACA was enacted, a significant number of state Medicaid agencies have not even filed a State Plan Amendment (SPA) to gain the approval of its CMS Regional Office (“R.O.”) to add FSBC payment to that State’s Medicaid Plan.

This problem was brought to the attention of Ms. Mann and the CMS team in a letter dated March 23, 2010 (AABC’s correspondence and Ms. Mann’s response are attached). In addition to States’ failure to implement payment for the services and professional fees, the States have failed to enforce the

requirement in law for Medicaid managed care organizations to comply with section 1902(a)(10)(A) mandate. Section 1932 of the Social Security Act [42 U.S.C. §1396u-2] contains no language that would exempt managed care organizations from compliance with the mandated services required by section 1902(a)(10)(A) [42 U.S.C. § 1396a(a)(10)(A)], while paragraph (b)(7) of that section prohibits MCO discrimination against any category of provider.

### **Implementation Chart**

AABC has been tracking the filing of the SPAs with the Regional Offices and the implementation of these provisions at the state level. Attached is AABC's chart (as of 2.22.13). This information was obtained through several sources including State Medicaid offices, search functions on the CMS website and Google, and an FOIA information request to each of the CMS Regional Offices.

The following 22 states and four territories have not filed an SPA to add FSBC services: Alaska, Colorado, Delaware, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Vermont, Wisconsin, Wyoming, Puerto Rico, Virgin Islands, American Samoa, Northern Marianas. Furthermore, SPAs filed by California, Nebraska, Oregon, and Utah, each of which were approved by a CMS Regional Office, contained errors in implementation. Finally, although Florida's SPA was appropriately rejected by the Atlanta R.O. for errors, AABC members report that the revisions underway in that state still do not rectify the problems.

We have encountered misinformation or lack of knowledge at the State level including:

- We have been told there is no mandate.
- We have found a lack of knowledge about what services and overhead costs are included for payment in the facility service fee.
- We have been told there is no mandate for Medicaid MCOs to include freestanding birth centers.

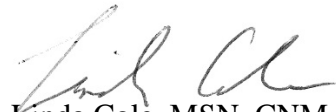
In closing, AABC makes the following requests:

1. Rulemaking: We request that you consider the attached draft rule for promulgation and inclusion in Part 440, Subpart A, of the CMS rules.
2. MCOs – We request a copy of policy guidance or other rules or regulations as they relate to Medicaid MCOs.
3. Assignment of Staff Person - As offered last year, we request that Ms. Mann assign a CMS staff person with the responsibility to work with AABC staff on obtaining copies of all state birth center SPAs and R.O. SPA approvals or denials. We can notify whomever you designate of any errors in these documents that could impede implementation. We also request that this person be the point of contact for the Regional offices.

Thank you for your attention to these matters. We look forward to working with you and CMS on a full resolution of these issues.

Please direct your staff to contact Kate Bauer, AABC's Executive Director, to coordinate follow-up on these issues. Kate can be contacted at our national office: tel: 215-234-8068, email: [katebauer@birthcenters.org](mailto:katebauer@birthcenters.org).

Respectfully submitted,



Linda Cole, MSN, CNM  
President, American Association of Birth Centers

Attachments:

AABC Correspondence with Cynthia Mann/CMS (March-May 2012)  
Chart - State Compliance with Sec 2301 as of 2.22.12  
Draft new 42 CFR 440.190 - new rule for FSBC  
Draft amended 42 440.210

cc:

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