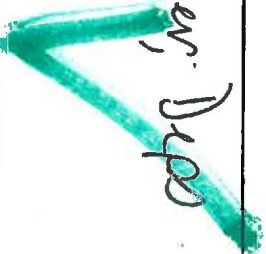


**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR**

ACTION REFERRAL

TO	DATE
Myers	1-30-09

DIRECTOR'S USE ONLY		ACTION REQUESTED	
1. LOG NUMBER	100408	<input type="checkbox"/> Prepare reply for the Director's signature	DATE DUE _____
2. DATE SIGNED BY DIRECTOR	cc: Ms. Forkner, Dep 	<input type="checkbox"/> Prepare reply for appropriate signature	DATE DUE _____
		<input type="checkbox"/> FOIA	DATE DUE _____
		<input checked="" type="checkbox"/> Necessary Action	

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth Street, SW, Suite 4T20
Atlanta, Georgia 30303-8909



January 26, 2009

RECEIVED

Ms. Emma Forkner, Director
Department of Health and Human Services
P. O. Box 8206

JAN 30 2009

Columbia, South Carolina 29202-8206

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Dear Ms. Forkner:

In answer to your question concerning the coverage of men under the Medicaid State Plan eligibility option for individuals needing treatment for breast or cervical cancer, sections 1902(a)(1)(A)(ii)(XVIII) and 1902(aa) of title XIX of the Social Security Act do not mention that this Medicaid coverage is limited to women. However, according to section 1902(aa)(3) of the Act, this Medicaid eligibility group is limited to individuals who have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention's breast and cervical cancer early detection program established under Title XV of the Public Health Service Act. Title XV begins at Section 1501(a)(1) by stating that the purpose of these programs is "to screen women for breast and cervical cancer as a preventive health measure..." Elsewhere, Title XV refers to this program as serving women.

This optional Medicaid eligibility group authorized by title XIX of the Social Security Act was authorized by the Breast and Cervical Cancer Prevention and Treatment Act (Public Law 106-354), enacted effective October 1, 2000. The Act begins by stating that it is "An Act to amend title XIX of the Social Security Act to provide medical assistance for certain women screened and found to have breast or cervical cancer under a federally funded screening program..." Federal regulations for the program are at Title 42. The Public Health and Welfare, Chapter 6a. The Public Health Service, Preventive Health Measures with Respect to Breast and Cervical Cancers (42 United States Code § 300k).

Because the Federal statute and regulation specify "women" as screened under this CDC grants program to states, the States' breast and cervical cancer early detection programs (regardless of the screening option selected) are legally bound to limit their screening to women under this program, and have done so throughout the history of the program. The CDC concurs with this position. In order for the program's scope to be broadened to cover men, Congress would need to pass an amendment to title XV of the Public Health Service Act.

Lastly, this is the only Medicaid eligibility group, besides the group for pregnant women, limited by gender. In order to change the eligibility requirements, Congress would need to change the law. While Medicaid treatment for breast cancer is not limited to women, coverage is limited to Medicaid recipients who are determined eligible for one of the many eligibility groups covered under an approved Medicaid State plan in accordance with title XIX of the Social Security Act. If an individual is determined by a State's Medicaid program to be ineligible for one eligibility

Ms. Emma Forkner
Page 2

group, the individual's eligibility is determined for other eligibility groups for which the individual may qualify. Also, many States provide medical coverage with all-State dollars for certain individuals determined to be ineligible for the Federal financial participation.

If you have any questions concerning these issues, please call Elaine Elmore, of our staff, at (404) 562-7408.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Kaye Justis".

Mary Kaye Justis, RN, MBA
Acting Associate Regional Administrator
Division of Medicaid & Children's Health Operations