

Date: April 12, 1996
To: Nursing Homes

BQC-96-020
NH 14

Supersedes BQC-92-057

From: Judy Fryback, Director
Bureau of Quality Compliance

Assurance of Financial Security - 483.10(c)(7)/HCFA Clarification Re: Surety Bonds, Acceptable Alternatives and Self-Insurance

Since October 1, 1990, federal long term care regulations have required an Assurance of Financial Security (CFR 483.10(c)(7)). Facilities have complied with this requirement by purchasing surety bonds.

In response to many questions, the Bureau wrote to the Health Care Financing Administration (HCFA) for clarification of several key questions. A copy of their response is attached to this memorandum. The response clarifies issues related to self-insurance and HCFA's views on alternatives to surety bonds. We also shared this information with the Office of the Commissioner of Insurance and consulted with them on these matters as well.

In order for a surety bond (or an alternative acceptable to HCFA) to be approved, the following three provisions must be met:

- (1) It must be issued by a company that is licensed to do business in Wisconsin, and is unrelated in any way to the facility or its management.
- (2) The amount of insurance must be equal to, or greater than, all resident funds managed by the facility as required in 42 CFR 483.10(c)(2) and 483.10(c)(3)(i) and (ii). This includes resident funds held in bank accounts.
- (3) The obligee named in the contract is to be the Wisconsin Department of Health and Social Services, or its assignees.

Since the obligee is the Wisconsin Department of Health and Social Services, the Bureau of Quality Compliance (BQC) needs to keep a copy of the facility's original bond on file in its office.

Additionally, facilities should send any updates, endorsements, or other changes regarding their bond to our central office at the time of their annual licensure renewal.

Therefore, to establish a surety bond file with BQC, please send a copy of your bond to the following address by May 31, 1996:

Wisconsin Division of Health Bureau of Quality Compliance P.O. Box 309 Madison WI 53701-0309 Attn: Bonnie Shebelski	CURRENT ADDRESS AS OF 2002 Wisconsin Department of Health and Family Services BQA PRQI PO Box 2969 Madison, WI 53701-2969
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HCFA has stated that, in the cases of county-operated or municipality-operated nursing homes, they may self-insure **as long as the self-insurance fulfills the intent of the surety bond requirement that the county or municipal government is liable to cover any loss of residents for any reason, whether by commission or omission.** Counties or municipalities that choose this option must submit a letter to BQC at the above address, that declares they are self-insuring. That letter must include language related to the coverage and obligee provisions of the bond requirements.

Finally, as stated on the HCFA response, all entities involved in the preparation and filing of the bonds, or their alternatives, must keep the residents' best interests foremost in their minds. Therefore, facilities must implement a mechanism to protect resident funds from any loss.

Questions regarding the approval process should be directed to Jerome M. Cabala, CICSW, Health Services Consultant, at (AS OF 2003 Dinh Tran, (608) 266-6646). If you have additional questions regarding the Assurance of Financial Security (CFR 428.10(a)(2)), please contact the following persons at your BQC Regional Office.

Southeastern Regional Office 819 N. 6th St., Rm. 875 Milwaukee, WI 53203	Pat Benesh, RFOD	(414) 227-4914
	Tony Oberbrunner, RFOD	(414) 227-4908

Southern Regional Office 3514 Memorial Drive Madison, WI 53704	Phyllis Tschumper, RFOD	(608) 243-2374
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Northeastern Regional Office 200 N. Jefferson St., Suite 211 Green Bay, WI 54301	Dolores Zwiers, Adm. Asst.	(414) 448-5245
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Western Regional Office 312 South Barstow, St., Suite #1 Eau Claire, WI 54701-3667	Charlie Kirk, RFOD	(715) 836-4753
	Joe Bronner, RFOD	(715) 836-3032

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Attachment: HCFA Response

February 10 [?] 1996

Judy Fryback, Director, Bureau of Quality Compliance
Department of Health and Social Services
1 West Wilson Street
P.O. Box 309
Madison, Wisconsin 53701-0309

Dear Ms. Fryback:

This is in response to your January 4, 1996, letter in which you requested clarification of the requirements of regulations at 42 CFR 483.10(c)(7) – Assurance of Financial Security. Specifically, you asked about acceptable alternatives to surety bonds; whether government entities can self-insure; and what to keep on file in the event a claim becomes necessary.

Current legislation at sections 1819(c)(6) and 1919(c)(6) of the Social Security Act, as well as the accompanying regulations cited in your letter, require a nursing home to purchase a surety bond, or otherwise provide assurances satisfactory to the Secretary, to assure the security of its residents' funds. Guidelines we prepared at Tag F161 to interpret these requirements outline the issues a surety bond, or an alternative, must address. We recognize the variety in the administrations of States and their nursing homes across the country and expect State and federal surveyors to apply the guidance we have provided regarding surety bonds on a case-by-case basis.

Addressing the specific concerns in your letter:

What are acceptable alternatives to surety bonds? Because of wide variations in State law and practice, we do not have concrete examples of acceptable alternatives to surety bonds. When considering whether or not a nursing home meets this requirement, the surveyor must focus on its **intent**; that is, residents' funds **must be safeguarded** and the bond or other mechanism which accomplishes this must:

- designate the obligee (depending on State law, the resident individually or in aggregate, or the State on behalf of each resident) who can collect in case of a loss;
- specify that the obligee may collect due to any failure by the facility, whether by commission, bankruptcy, or omission, to hold, safeguard, manage, and account for the residents' funds; and
- be managed by a third party unrelated in any way to the facility or its management.

Can governmental entities self-insure? Yes. County-operated and municipality-operated nursing homes may self-insure **as long as the self-insurance fulfills the intent of the surety bond requirement that the county or municipal government is liable to cover any loss of resident funds for any reason, whether by commission or omission.**

Is it necessary for the States to keep the original surety bond of file, etc.? Basically, we believe that wherever the State is named as the obligee, it should definitely maintain a copy of the surety bond in its files. We expect that nursing homes and the States will reach mutual agreements, reflecting best business practices, on the disposition of the originals and copies of the surety bonds being executed. All entities involved in the preparation and filing of the bonds, or their acceptable alternatives, must keep the residents' best interests foremost in their minds. They must agree upon and implement a mechanism to protect residents' funds from any loss.

I hope this is helpful and responsive to your concerns. If you have additional questions, please call me at (410) 786-3495.

Sincerely, /s/ Michael M. Hutchins
Center for Long-Term Care
Health Standards and Quality Bureau, HCFA

cc: Chicago Regional Office