DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Florida State Plan Amendments (SPA) 12-015

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS

ACTION: Notice of Hearing

SUMMARY: This notice announces an administrative hearing to be held on April 30, 2013, at the CMS Atlanta Regional Office, Atlanta Federal Center, 3rdth Floor, 61 Forsyth Street, SW., Suite 3B52, Atlanta, Georgia 30303-8909, to reconsider CMS' decision to disapprove Florida SPA 12-015.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

FOR FURTHER INFORMATION CONTACT:
Benjamin Cohen, Presiding Officer
CMS
2520 Lord Baltimore Drive
Suite L
Baltimore, Maryland 21244
Telephone: (410) 786-3169

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider CMS' decision to disapprove Florida SPA 12-015 which was submitted on September 14, 2012, and disapproved on December 13, 2012. The SPA reflects a Florida state law that would limit outpatient hospital emergency room visits to six per fiscal year for non-pregnant adults, 21 years of age and older, effective August 1, 2012.

CMS disapproved this SPA after consulting with the Secretary as required at 42 CFR 430.15(c)(2), because it appeared to impose a limitation on outpatient hospital services that was based on the individual's diagnosis, illness, or condition and because the state failed to demonstrate that the limitation is consistent with the provision of a sufficient amount, duration, and scope to reasonably achieve the purpose of the benefit. As a result, CMS concluded that the proposed coverage under the SPA would not be sufficient to meet statutory requirements set forth in section 1902(a)(10)(A) of the Social Security Act (the Act), which incorporates by reference the provisions of 1905(a)(2)(A) of the Act, and 42 CFR 440.20(a)(3)(ii), and the requirements of section 1902(a)(10)(B) of the Act. We explain in more detail below.

Under section 1902(a)(10)(A) of the Act, a state plan must provide for making medical assistance available to eligible individuals, including for most eligible individuals the medical assistance specified in section 1905(a)(2) of the Act. This provision includes in the definition of medical assistance "outpatient hospital services." Section 1902(a)(17) of the Act requires the state plan to include reasonable standards for determining the extent of medical assistance, and under section 1902(a)(19) of the Act, the state plan must assure that eligibility for care and services are provided in the best interest of the recipients. As the implementing regulations at 42 CFR 440.230(b) require, a state plan must "specify the **amount, duration, and scope** of each service that it provides," and "each service must be **sufficient in amount, duration, and scope** to reasonably achieve its purpose." While states may place "appropriate limits on a service based such criteria as medical necessity or utilization control procedures" under CFR 440.230(d), 42 CFR 440.230(c) specifies that a state may not arbitrarily deny or reduce the amount, duration, or scope of required services, including physicians' services, solely because of the diagnosis, type of illness, or **condition**.

The proposed limitation on certain outpatient hospital services appeared to be based on the diagnosis, illness, or condition because it is limited to outpatient services furnished at a hospital emergency room, which are designed to address acute and immediate conditions. Thus, the limitation appeared to violate the requirements of 42 CFR 440.230(c). Even if that were not the case, the state has not demonstrated that the limitation is consistent with provision of a sufficient amount, duration, and scope to reasonably achieve the purpose of the benefit, which in this case would be providing reasonable coverage that meets the needs of most beneficiaries who need the outpatient hospital services, consistent with 42 CFR 440.230(b).

In disapproving SPA 12-015, CMS staff suggested to the state some alternate methods to address inappropriate utilization of hospital emergency rooms, including the development of payment rates for hospital emergency rooms that are lower if the individual does not require care for an acute and immediate condition, or the use of the alternative cost sharing authority available to states under section 1916(d) of the Act, permitting higher beneficiary cost sharing for elective non-emergency use of the emergency room. CMS offered to work with the state on these options and technical assistance.

At issue in this appeal are the following issues, which are more detailed than set out in the disapproval letter:

- Whether the exceptions to the proposed general service limitations on outpatient hospital services violate comparability requirements under section 1902(a)(10)(B) of the Act and implementing regulations at 42 CFR 440.230(c) because they provide that some

individuals described in section 1902(a)(10)(A) of the Act, who have particular diagnoses or conditions, will receive benefits that individuals with other diagnoses and conditions will not receive.

· Whether the imposition of a limit specifically on emergency outpatient hospital visits would violate those comparability requirements because the limitation would be imposed only on outpatient hospital visits that are warranted to address acute and immediate conditions, which means that the limitation is based on the diagnosis or condition.

· Whether the exception to the limitation on emergency room visits for "aliens" would violate section 1902(a)(10)(B) of the Act because it would provide that aliens would receive a greater amount, duration and scope of emergency outpatient hospital benefits than other individuals described in section 1902(a)(10)(A) of the Act.

· Whether the state has demonstrated that the resulting outpatient hospital benefits are of a sufficient amount, duration and scope to reasonably achieve the purpose of the benefit, consistent with the requirements of sections 1902(a)(10)(A) and 1905(a)(2) of the Act, and implementing regulations at 42 CFR 440.230(b), which CMS has interpreted to mean that the state provides reasonable coverage of the benefit that meets the needs of most beneficiaries who need the outpatient hospital services. While the state provided information on emergency room services, it did not provide information on outpatient hospital services.

Section 1116 of the Act and Federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Florida announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Stuart F. Williams, Esq.
General Counsel
Agency for Health Care Administration
Office of the General Counsel
2727 Mahan Drive, Building 3, MS #3
Tallahassee, FL 323008

Dear Mr. Williams:

I am responding to your request for reconsideration of the decision to disapprove the Florida State Plan Amendment (SPA) 12-015 which was submitted on September 14, 2012, and disapproved on December 13, 2012. The SPAs reflects a Florida state law that would limit outpatient hospital emergency room visits to six per fiscal year for non-pregnant adults, 21 years of age and older, effective August 1, 2012.

I disapproved Florida SPA 12-015 because it appeared to impose a limitation on outpatient hospital services that was based on the individual's diagnosis, illness, or condition and because the state failed to demonstrate that the limitation is consistent with the provision of a sufficient amount, duration and scope to reasonably achieve the purpose of the benefit. At issue in this appeal are the following issues, which are more detailed than set out in the disapproval letter:

- Whether the exceptions to the proposed general service limitations on outpatient hospital services violate comparability requirements under section 1902(a)(10)(B) of the Act and implementing regulations at 42 CFR 440.230(c) because they provide that some individuals described in section 1902(a)(10)(A) of the Act, who have particular diagnoses or conditions, will receive benefits that individuals with other diagnoses and conditions will not receive.

- Whether the imposition of a limit specifically on emergency outpatient hospital visits would violate those comparability requirements because the limitation would be

imposed only on outpatient hospital visits that are warranted to address acute and immediate conditions, which means that the limitation is based on the diagnosis or condition.

- Whether the exception to the limitation on emergency room visits for "aliens" would violate section 1902(a)(10)(B) of the Act because it would provide that aliens would receive a greater amount, duration and scope of emergency outpatient hospital benefits than other individuals described in section 1902(a)(10)(A) of the Act.

- Whether the state has demonstrated that the resulting outpatient hospital benefits are of a sufficient amount, duration and scope to reasonably achieve the purpose of the benefit, consistent with the requirements of sections 1902(a)(10)(A) and 1905(a)(2) of the Act, and implementing regulations at 42 CFR 440.230(b), which CMS has interpreted to mean that the state provides reasonable coverage of the benefit that meets the needs of most beneficiaries who need the outpatient hospital services. While the state provided information on emergency room services, it did not provide information on outpatient hospital services.

I am scheduling a hearing on your request for reconsideration to be held on April 30, 2013, at the CMS Atlanta Regional Office, Atlanta Federal Center, 3rd^{h} Floor, 61 Forsyth Street, SW., Suite 3B52, Atlanta, Georgia 30303-8909, to reconsider CMS' decision to disapprove Florida SPA 12-015.

If this date is not acceptable, I would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact the Mr. Cohen at (410) 786-3169. In order to facilitate any communication that may be necessary between the parties prior to the hearing, please notify the presiding officer to indicate acceptability of the scheduled hearing date and provide names of the individuals who will represent the state at the hearing.

Sincerely,

Marilyn Tavenner

Acting Administrator

Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18) (Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: March 8, 2013

Marilyn Tavenner

Acting Administrator

Centers for Medicare & Medicaid Services

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