

Centers for Medicaid and State Operations / National Institutional Reimbursement Team

OCT 13 2009

Susan Dreyfus, Secretary
Department of Social and Health Services
Post Office Box 45010
Olympia, Washington 98504-5010

Re: Washington State Plan Amendment (SPA) Transmittal Number #09-024

Dear Secretary Dreyfus:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under Transmittal Number (TN) #09-024. Effective for services on or after July 1, 2009, this amendment proposes to reduce "budget dial" which will have the effect of reducing statewide average, Medicaid nursing facility per diem payments.

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30) and 1903(a) of the Social Security Act and the regulations at 42 CFR 447 Subpart C. Before we can continue processing this amendment, we need additional or clarifying information.

The regulation at 42 CFR 447.252(b) requires that the State plan include a comprehensive description of the methods and standards used to set payment rates. Section 6002 of the State Medicaid Manual explains further that the State plan must be comprehensive enough to determine the required level of Federal Financial Participation (FFP) and to allow interested parties to understand the rate setting process and the items and services that are paid through these rates. Further, since the plan is the basis for FFP, it is important that the plan's language be clear and unambiguous. Therefore, we have the following questions/concerns regarding TN 09-024:

How will the reduction in rates impact the State's compliance with requirements of 1902(a)(30)?

Specifically:

1. How did the State determine that the Medicaid provider payments are sufficient to enlist enough providers to assure access to care and services in Medicaid at least to the extent that care and services are available to the general population in the geographic area?

2. What types of studies, analyses or surveys were conducted or used by the State to assure that care and services would be available to Medicaid clients if the proposed rate cut is implemented (e.g., comparison with commercial access/reimbursement rates, review of provider cost data, comparison with Medicare rates, comparison with surrounding State Medicaid rates, comparison with national averages for Medicaid or Medicare, etc.)?
3. How does the State intend to monitor the impact of the new rates on access and implement a remedy should rates be insufficient to guarantee sufficient access to care as required by 1902(a)(30)? Provide specific details about the measures to be used, how these measures were developed, data sources, and plans for reporting, tracking and monitoring. The State should also provide the specific benchmarks for each measure which would trigger State action to remedy indicated access problems.
4. What action(s) does the State plan to implement, if the proposed rate reduction is approved, in order to counter any decrease in provider participation, if such a decrease is found to prevent sufficient access to care?

The following questions are being asked and should be answered in relation to all payments made to all providers under Attachment 4.19-D of your State plan, including payments made outside of those being amended with this SPA. Please be aware that some of the questions have been modified. If you have provided a upper payment limit (UPL) demonstration in a previous request for additional information (RAI) response, which is still current, you may refer to that SPA and the date of your response letter in lieu of submitting a new UPL demonstration.

5. Section 1903(a)(1) provides that Federal matching funds are only available for expenditures made by States for services under the approved State plan. Do providers receive and retain the total Medicaid expenditures claimed by the State (includes normal per diem, supplemental, enhanced payments, other) or is any portion of the payments returned to the State, local governmental entity, or any other intermediary organization? If providers are required to return any portion of payments, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the payments, a complete listing of providers that return a portion of their payments, the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the State (i.e., general fund, medical services account, etc.).
6. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the State share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide State share. Note that, if the appropriation is not to the Medicaid agency, the source of the State share

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would necessarily be derived through either an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-Federal share is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the state agency receives the transferred amounts from the local government entity transferring the funds. If CPEs are used, please describe the methodology used by the State to verify that the total expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b). For any payment funded by CPEs or IGTs, please provide the following:

- (i) a complete list of the names of entities transferring or certifying funds;
 - (ii) the operational nature of the entity (state, county, city, other);
 - (iii) the total amounts transferred or certified by each entity;
 - (iv) clarify whether the certifying or transferring entity has general taxing authority; and, whether the certifying or transferring entity received appropriations (identify level of appropriations).
7. Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for FFP to States for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.
 8. Please provide a detailed description of the methodology used by the state to estimate the UPL for each class of providers (State-owned or operated, non-state government-owned or operated, and privately-owned or operated). Please provide a current (i.e. applicable to the current rate year) UPL demonstration.
 9. Does any governmental provider receive payments that in the aggregate (normal per diem, supplemental, enhanced, other) exceed their reasonable costs of providing services? If payments exceed the cost of services, do you recoup the excess and return the Federal share of the excess to the Centers for Medicare & Medicaid Services (CMS) on the quarterly expenditure report?

We are requesting this additional/clarifying information under provisions of section 1915(f) of the Social Security Act (added by PL 97-35). This has the effect of stopping the 90-day clock for CMS to take action on the material. A new 90-day clock will not begin until we receive your response to this request. In accordance with our guidelines to State Medicaid Directors dated January 2, 2001, if we have not received the State's response to our request for additional information within 90 days from the date of this letter, we will initiate disapproval action on the amendment.

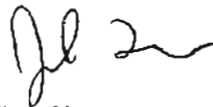
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Please submit your response to:

National Institutional Reimbursement Team
Attention: Mark Cooley
CMS, CMSO
7500 Security Boulevard, Mail Stop S3-13-15
Baltimore, Maryland 21244-1850

If you have any questions, please call me at (206) 615-2380.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Fico', with a stylized flourish at the end.

Joe Fico
National Institutional Reimbursement Team

cc:

Douglas Porter, Assistant Secretary, DSHA
Kathy Leitch, Assistant Secretary, DSHS, ASDA
Ken Callaghan, Chief, Office of Rates Management (via email)
Ed Southon, Office of Rates Management (via email)