

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)  
Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval  
of California State Plan Amendments (SPAs) 08-009A; 08-009B1;  
08-009B2; 08-009D; and 08-019

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

ACTION: Notice of Hearing

SUMMARY: This notice announces an administrative hearing to be held on February 10, 2011, at the CMS San Francisco Regional Office, 90 7<sup>th</sup> Street, #5-300 (5W), San Francisco, California 94103 to reconsider CMS' decision to disapprove California SPAs 08-009A; 08-009B1; 08-009B2; 08-009D; and 08-019.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by [Insert date 15 days after date of 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 the decision of the Centers for Medicare & Medicaid Services (CMS) to disapprove California State plan amendments (SPAs) 08-009A; 08-009B1; 08-009B2; 08-009D; and 08-019 which were submitted on December 31, 2008, and disapproved on November 18, 2010. The SPAs proposed to reduce the reimbursement rates for certain services furnished under the approved State plan.

In the initial determination, CMS determined, after consulting with the Secretary, that it is unable to approve these SPAs because California has not demonstrated that it would meet the conditions set out in section 1902(a)(30)(A) of the Social Security Act (Act).

Section 1902(a)(30)(A) of the Act requires that State plans assure that “payments [to providers]... are sufficient to enlist enough providers so that care and services are available under the [State’s Medicaid] plan [to recipients] at least to the extent that such care and services are available to the general population in the geographic area.”

When the SPAs were initially submitted, the State did not provide information concerning the impact of the proposed reimbursement reductions on beneficiary access to services, even though available national data indicate that this may be an issue for California. In the Requests for Additional Information (RAI) for SPAs TN 08-009A, TN 08-009B-1, TN 08-009D, (sent to the State in December 2008), and 08-019 (sent to the State in March, 2009), CMS requested information about beneficiary access to services, but California did not respond. As indicated in a January 2, 2001, letter to State Medicaid Directors, to the extent that responses to such RAIs are not received within 90 days, CMS may initiate disapproval action. In this instance, in addition, CMS had concerns that, given the time that has elapsed since these SPAs were submitted but not implemented, the cumulative effect of a retroactively effective approval of these reimbursement reductions would only serve to exacerbate beneficiary access concerns.

For these reasons, and after consulting with the Secretary as required by Federal regulations at 42 CFR 430.15(c)(2), these SPAs were disapproved.

The issues to be considered at the hearing are:

- Whether California has demonstrated that the proposed payments to providers were sufficient to enlist enough providers so that care and services were available under the State's Medicaid plan at least to the extent that such care and services are available to the general population in the geographic area as required by section 1902(a)(30)(A) of the Social Security Act.
- Whether the application of the payment rates under the SPAs retroactively, based on the proposed effective date, would be consistent with that requirement under section 1902(a)(30)(A) of the Act.

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 California announcing an administrative hearing to reconsider the disapproval of its SPAs reads as follows:

Mr. Toby Douglas, Chief Deputy Director

Health Care Programs

Department of Health Care Services

1501 Capitol Avenue, 6<sup>th</sup> Floor

MS 0002

Sacramento, CA 95814

Dear Mr. Douglas:

I am responding to your request for reconsideration of the decision to disapprove the California State Plan Amendments (SPAs) 08-009A; 08-009B1; 08-009B2; 08-009D which were submitted on September 30, 2008, and 08-019 which was submitted on December 31, 2009, and disapproved on November 18, 2010. The SPAs proposed to reduce the reimbursement rates for certain services furnished under the approved State plan.

The issues to be considered at the hearing are:

- Whether California has demonstrated that the SPAs assured that the proposed payments to providers would be sufficient to enlist enough providers so that care and services were available under the State's Medicaid plan at least to the extent that such care and services are available to the general population in the geographic area as required by section 1902(a)(30)(A) of the Social Security Act.
- Whether the application of the payment rates under the SPAs retroactively, based on the proposed effective date, would be consistent with that requirement under section 1902(a)(30)(A) of the Act.

In reviewing this issue, we note that, when the SPAs were initially submitted, the State did not provide any information concerning the impact of the proposed reimbursement reductions on beneficiary access to services, even though available national data indicated that this may be an issue for California.

In Requests for Additional Information (RAI) for SPAs TN 08-009A, TN 08-009B1, TN 08-009D (sent to the State in December 2008) and 08-019 (sent to the State in March 2009), CMS requested information about beneficiary access to services, but California never responded. As indicated in a January 2, 2001, letter to State Medicaid Directors, to the extent that responses to such RAIs are not received within 90 days, CMS may initiate disapproval action. In this instance, in addition, CMS was concerned that, given the time that had elapsed since these SPAs had been submitted but were not implemented, the cumulative effect of a retroactively effective approval of these reimbursement reductions exacerbate beneficiary access concerns.

I am scheduling a hearing on your request for reconsideration to be held on February 10, 2011, at the CMS San Francisco Regional Office, 90 7<sup>th</sup> Street, #5-300(5W), San Francisco, California 94103- 6706, in order to reconsider the decision to disapprove SPAs 08-009A; 08-009B1; 08-009B2; 08-009D; and 08-019. If this date is not acceptable, we 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 are not acceptable, please contact the presiding officer at (410) 786-3169. To facilitate any

communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled, and to provide names of the individuals who will represent the State at the hearing.

Sincerely,

Donald M. Berwick, M.D.

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: December 15, 2010

---

Donald M. Berwick,

Administrator

Centers for Medicare & Medicaid Services

[FR Doc. 2010-32007 Filed 12/20/2010 at 8:45 am; Publication Date: 12/21/2010]