



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

Notice of Hearing: Reconsideration of Disapproval
Ohio Medicaid State Plan Amendment (SPA) 14-002

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

ACTION: Notice of Hearing: Reconsideration of Disapproval.

SUMMARY: This notice announces an administrative hearing to be held on January 7, 2015, at the Department of Health and Human Services, Centers for Medicare and Medicaid Services, Division of Medicaid & Children's Health, Chicago Regional Office, 233 N. Michigan, Avenue Suite 600 Chicago, Illinois 60601-5519, to reconsider CMS' decision to disapprove Ohio's Medicaid SPA 14-002.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by **[OFR: INSERT DATE 15 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT:

Benjamin R. 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 Ohio's Medicaid SPA 14-002 which was submitted to the Centers for Medicare and Medicaid Services (CMS) on February 28, 2014 and disapproved on August 29, 2014. In part, this SPA requested CMS approval of the state's proposal to exclude from the definition of an inmate any individual under age 19 who is residing in a juvenile detention facility and has not yet been adjudicated.

The issues to be considered at the hearing are:

- Whether Ohio Medicaid SPA 14-002 complied with the statutory requirement in section 1902(a) (10) (A) of the Social Security Act (the Act), which provides that the state plan must provide for making "medical assistance" available to eligible individuals. This section incorporates by reference the definition of medical assistance in section 1905(a) of the Act, which specifically provides, in the text following paragraph (29), that ". . . such term does not include - (A) any such payments with respect to care and services for any individual who is an inmate of a public institution (except as a patient in a medical institution)" This exclusion is not limited based on the age of the inmate.
- Whether the individuals specified in Ohio 14-002 are not inmates because they are individuals "in a public institution for a temporary period, pending other living arrangements appropriate to his needs," as specified in 42 CFR 435.1010 when they are involuntarily incarcerated in a public institution who have not yet been adjudicated.

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 Ohio announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. John McCarthy
Director
Ohio Department of Medicaid
50 West Town Street, Suite 400
Columbus, OH 43215

Dear Mr. McCarthy:

I am responding to your request for reconsideration of the decision to disapprove Ohio's Medicaid state plan amendment (SPA) 14-002, which was submitted to the Centers for Medicare and Medicaid Services (CMS) on February 28, 2014 and disapproved on August 29, 2014. I am scheduling a hearing on your request for reconsideration to be held on January 07, 2015, at the Department of Health and Human Services, Centers for Medicare and Medicaid Services, Division of Medicaid & Children's Health, Chicago Regional Office, 233 N. Michigan, Avenue Suite 600 Chicago, Illinois 60601-5519.

In part, this SPA requested CMS approval of the state's proposal to exclude from the definition of an inmate any individual under age 19 who is residing in a juvenile detention facility and has not yet been adjudicated. In its submission the state included the proposed change in the

eligibility section of the state plan. However, this is not an eligibility issue, but is related to availability of federal financial participation (FFP) for services.

In the event that CMS and the state come to agreement on resolution of the issues, which formed the basis for disapproval, these SPAs may be moved to approval prior to the scheduled hearing. During the reconsideration process, no federal financial participation (FFP) is available for services provided to individuals under age 19 residing in juvenile detention centers or other correctional institutions; except for inpatient care in a medical institution.

The issues to be considered at the hearing are:

- Whether Ohio Medicaid SPA 14-002 complied with the statutory requirement in section 1902(a) (10) (A) of the Social Security Act (the Act), which provides that the state plan must provide for making "medical assistance" available to eligible individuals. This section incorporates by reference the definition of medical assistance in section 1905(a) of the Act, which specifically provides, in the text following paragraph (29), that ". . . such term does not include - (A) any such payments with respect to care and services for any individual who is an inmate of a public institution (except as a patient in a medical institution)" This exclusion is not limited based on the age of the inmate.
- Whether the individuals specified in Ohio 14-002 are not inmates because they are individuals "in a public institution for a temporary period, pending other living arrangements appropriate to his needs," as specified in 42 CFR 435.1010 when they are involuntarily incarcerated in a public institution who have not yet been adjudicated.

If the hearing 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 R. 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 hearing date that has been scheduled and provide names of the individuals who will represent the state at the hearing.

Sincerely,

Marilyn Tavenner

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: November 26, 2014.

Marilyn Tavenner,

Administrator,

Centers for Medicare & Medicaid Services.

4120-01-P

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