



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

June 27, 2014

Ms. Barbara Washington
Centers for Medicare & Medicaid Services
Center for Medicaid and CHIP Services
7500 Security Boulevard
Mailstop S2-26-12
Baltimore, MD 21244-1850

Dear Ms. Washington:

Pursuant to 42 C.F.R. 430.18, the Louisiana Department of Health & Hospitals hereby requests that the Administrator reconsider the issue of whether Louisiana State Plan Amendments (SPAs) 13-23, 13-25, and 13-28 conform to the requirements for approval. The plan amendments were denied by letter dated May 2, 2014.

The amendments involve payments to private hospitals that have entered into Cooperative Endeavor Agreements (CEAs) with Louisiana State University (LSU) to operate certain hospitals owned and previously operated by LSU. These hospitals serve the great majority of Medicaid patients and uninsured in Louisiana. The plan amendments seek to continue payments to these hospitals that they previously received under the state plan when they were operated by LSU.

The CEAs are complex transactions that include, among many other provisions, a lease of the former LSU facilities to the private partners. The stated basis of the disapproval is that certain "advance lease payments" made under the CEA to LSU constitute "provider-related donations" under Section 1903(w) of the Social Security Act.

While DHH believes disapproval was inappropriate, it has been working diligently with CMS to submit a replacement SPA that addresses the concerns expressed by CMS. This SPA is currently pending before the agency. If the amendment is approved, the State will not proceed further with this request for reconsideration. If it becomes necessary to pursue the appeal, the State seeks reconsideration of the disapproval on the three grounds below and such other grounds as it may present at the hearing:

1. The advance lease payments are not donations. They are normal business practices in leasing transactions and are consistent with fair market value as determined by independent third party professionals.

2. Relevant Federal statutes and regulations do not give the Administrator the authority to disapprove a plan amendment just because there are questions regarding the funding of the payments to be made under the amendment. The principal concern expressed by CMS involves Section 1903(w), which is not part of Section 1902, the section that sets forth the requirements for a state plan, but instead is part of Section 1903, which determines how federal financial participation is to be calculated. Section 1903(w) simply says that "for purposes of determining the amount to be paid to a State," the amount of a provider-related donation shall be subtracted from a State's medical assistance expenditures. Nothing in any of the proposed plan amendments references the advance lease payments with which CMS has expressed concern. Therefore disapproval of the plan amendment was inappropriate, and CMS has other avenues, as set forth in Section 1903(w), to address its concern that the advance lease payments are prohibited donations.
3. The disapproval is inconsistent with precedents previously approved by the Administrator. 42 C.F.R. 430.15(b) states that approval authority is based on "policy statement and precedents previously approved by the Administrator." Last year, CMS approved a plan amendment for payments to a hospital previously operated by LSU after operations were transferred to a private partner. The CEA in that case included an advance lease payment.

We reserve the right to add further issues at the hearing, should one become necessary.

Respectfully,



J. Ruth Kennedy
Medicaid Director

c: Jeff Reynolds
Stephen Russo