

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Dallas Regional Office
1301 Young Street, Suite 833
Dallas, Texas 75202



DIVISION OF MEDICAID & CHILDREN'S HEALTH - REGION VI

March 26, 2015

Ms. Ruth Kennedy, Director
Bureau of Health Services Financing
Department of Health and Hospitals
Post Office Box 91030
Baton Rouge, Louisiana 70821-9030

RE: Louisiana 14-041

Dear Ms. Kennedy:

We have reviewed the proposed State plan amendment (SPA) to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 14-0041. The purpose of this amendment is to allow for new supplemental payments to qualifying non-state owned and operated nursing facilities (NF).

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 (the 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 14-0041:

SIGNED AGREEMENTS

1. On February 18, 2015, CMS received the State's response to our Informal Request for Additional Information (IRAI). We understand that the State disagrees with our listing the non-state governmental nursing facilities for FFY 2015 on the Attachment 4.19-A page 9m.

In a telephone conversation, CMS was advised that Hospital Service Districts would be buying private nursing homes. CMS has concerns that such financial arrangements meet the definition of non-bona fide provider donations as described in federal statute and regulations.

Detailed information needs to be provided to determine whether the dollar value of the contracts between private and public entities have any fair market valuation. There can be no transfer of value or a return or reduction of payments reflected in these agreements.

If the state is proposing to make supplemental payments to any or all of the current five NSGO NFs, the state must provide, for those facilities, copies of all signed, or under consideration, Cooperative Endeavor Agreements, lease agreements, Intergovernmental Transfers (IGTs), management agreements, MOUs, management contracts, loan agreements, and any other agreements that would present the possibility of a transfer of value between any two entities. The qualifying NFs must be identified in the state plan. Please submit the revised plan pages for our review.

A similar submission will be required should the state propose to qualify additional NSGO NFs for supplemental payments. CMS expects to review all future non-state governmental NF funding arrangements in Louisiana to insure compliance with SMDL#14-004 issued on May 9, 2014. CMS will carefully review these future arrangements. CMS will require a revised State plan for each new non-state NF.

Whether the State is a party to the financial arrangement or not, the State is ultimately responsible to ensure that the funding is appropriate. The State would be responsible for refunding any FFP if CMS finds the funding source inappropriate.

Additional Questions from the State's response to the IRAI

2. In IRAI response for Question 1 – CMS still has only the hypothetical number for the budget impact which is based on estimates of 75 and 100 facilities for 2015/2016. How did the State estimate that in 2015, 75 facilities would qualify as NSGO and seek agreements to receive supplemental payments?
3. In IRAI response for Question 5 – The state's proposed language requires that NSGO entities must enter into an "agreement" with the Department to participate and qualify for a Medicaid supplemental payment. What is the purpose of the agreement and will this be a standard template agreement? Have any NSGO entities entered into such an agreement with the Department? If yes, please provide a copy of the agreement. If no agreements have been executed, please provide a copy of the agreement document.
4. In IRAI response for Question 6 – Does the State expect that the five current NSGO facilities will seek to enter into an agreement to receive supplemental payments?

5. In IRAI response for Question 10 – Please clarify the last sentence of the State’s response. It states “In addition, supplemental payments will provide resources that enhance services on the continuum of care between rural hospitals and nursing facilities in order to improve coordination of care, transfer/discharge relationships, and reduce hospital readmissions.” What are the enhanced services? How will the State monitor the reduction of hospital readmissions?
6. In IRAI response for Question 11 – Do the five NSGO facilities only serve Medicaid patients? Are any of the five facilities facing precarious financial conditions?
7. In IRAI response for Question 12 – What is the patient mix of the current five non-state nursing facilities? What is the percentage of Medicaid patients that are in these five non-state nursing facilities? What evidence or documentation does the State have that a private nursing facility will have the same high acuity needs versus a non-state nursing facility?
8. In IRAI response for Question 13 – Please provide details on how payments will positively impact quality of care.
9. In IRAI response for Question 18 – CMS expected the State to be more specific in this question. For example, the base rate is \$150 per diem and the supplemental payment will increase that payment by \$75? Please review question#18 and provide a more specific response.
10. In IRAI response for Questions 24 through 27 – Is the State indicating that HSDs can acquire nursing homes?
11. In IRAI response for Question 31 – What does the following phrase mean? “In the future, the ownership of the property and equipment of any potentially eligible NSGO NF will be reviewed as part of the change of ownership”. Please explain the financial transactions, leases, and agreements the state expects will occur between the HSD and the private nursing home to effect the change of ownership. For instance, will the private nursing home be purchased for fair market value?
12. In IRAI response for Question 42 – When the State notes that the funds will come from the non-state government entities; does that mean the funds will come from the HSD or from the NF? It does not appear that new funds will be raised by the HSD.

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.

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.

Please submit your response to the following address:

Centers for Medicare and Medicaid Services
Division of Medicaid and Children's Health Operations
Dallas Regional Office
Attention: Bill Brooks
1301 Young Street, Suite 833
Dallas, Texas 75202

If you have any questions, please contact Tamara Sampson, of my staff, at (214) 767-6431 or by e-mail at Tamara.Sampson@cms.hhs.gov

Sincerely,

Bill Brooks
Associate Regional Administrator
Division of Medicaid and Children's Health Operations