Bobby Jindal
GOVERNOR

Kathy H. Kliebert
SECRETARY

State of Louisiana

Department of Health and Hospitals
Bureau of Health Services Financing

VIA ELECTRONIC MAIL ONLY

September 29, 2015

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

RE: Petition for Reconsideration
LA SPA TN 14-0041
Nursing Facilities Reimbursement Methodology Supplemental Payments

Dear Ms. Washington:

Please accept this letter as Louisiana's petition for reconsideration ("Petition") regarding the Centers for Medicare and Medicaid Services' (CMS) disapproval of Louisiana's proposed State Plan amendment for supplemental payments to qualifying non-state government owned or operated nursing facilities, referred to herein as "Supplemental Payment Program" or "Program" (SPA 14-0041). This Petition is being submitted in accordance with 42 CFR 430.18, within sixty (60) days of the State's receipt of the July 16, 2015 letter from Mr. Andrew M. Slavitt disapproving SPA 14-0041 ("Disapproval Letter").

The State requests that you reconsider the issue of whether SPA 14-0041 conforms to the requirements for approval based on: (i) Louisiana's December 30, 2014 submission of SPA 14-0041 ("SPA", attached at Exhibit 1); (ii) Louisiana's February 18, 2015 response to CMS's informal request for additional information ("IRAI Response", attached at Exhibit 2); (iii) Louisiana's April 23, 2015 response to CMS's request for additional information ("RAI Response", attached at Exhibit 3); and (iv) information provided herein.

We believe that SPA 14-0041 and additional information provided in the IRAI Response and RAI Response are consistent with sections 1902(a)(2), 1902(a)(4), 1902(a)(30)(A), 1903(a), and 1903(w) of the Social Security Act ("the Act") and therefore Mr. Andrew M. Slavitt's original determination disapproving the SPA should be reversed. Further, based on the stated reasons for denial in the Disapproval Letter, the State offers the following additional information as to why the SPA should have been approved, and for why the State requests Mr. Andrew M. Slavitt's original determination be reversed.

1. Conditions Under Which Supplemental Payments Will be Made.

CMS stated in the Disapproval Letter that the State Plan does not clearly explain the conditions under which supplemental payments will be made, because Louisiana did not submit agreements, documentation supporting the relationships, and financial transaction information for facilities proposed to receive supplemental payments, and therefore CMS could not conclude that the requirements of §1902(a)(4) (methods of administration necessary for proper and efficient administration of the State Plan) and §1902(a)(30)(A) (payments consistent with economy, efficiency and quality of care) of the Act have been satisfied.

The State identified the agreement that the provider must execute under SPA 14-0041 in order to qualify for supplemental payments, in its IRAI Response and RAI Response, as an IGT agreement. This IGT agreement is to ensure that the non-state governmental ("NSGO") entity that owns and/or operates the nursing facility ("NSGO NF") voluntarily agrees to make the IGT and also qualifies for Medicaid supplemental payments as a NSGO entity. This IGT agreement will be a standard template agreement. As stated in RAI Response #3, at the time of the RAI Response, no NSGO NFs had or have entered into an IGT agreement with the Department. However, the Department would be happy to provide CMS a copy of the agreement once completed. As further described in #2, below, a draft version of the IGT agreement is now complete and is being provided to CMS at Exhibit 4.

The five (5) existing NSGO NFs currently eligible under SPA 14-0041 are owned or operated by hospital services districts ("HSDs"), which are NSGO entities. As previously stated in IRAI Response #20, to the State's knowledge, these five (5) NSGO NFs do not have lease or management arrangements and have not had any financial transactions for which the State can submit documentation to CMS.

The five (5) existing NSGO NFs, which would be eligible under SPA 14-0041, are:

1. Gueydan Memorial Guest Home
2. Lane Memorial Hospital Geriatric LTC
3. LaSalle Nursing Home
4. St. Helena Parish Nursing Home
5. Natchitoches Parish Hospital LTCU

These five (5) existing NSGO NFs would presently qualify for the supplemental payments in the proposed SPA, as the HSDs that own or operate the NSGO NFs are NSGO entities with the authority to own nursing facilities, under state law.[1] Indeed, HSDs are NSGOs authorized to make permissible IGTs under Federal[2] and state law as HSDs are statutorily described as "political subdivisions,"[3] are authorized to levy taxes and issue bonds,[4] and have their governing commissions appointed by the policy jury of the parish.[5] Although the State believes all five (5) NSGO NFs will participate in SPA 14-0041 at some future date, it is not absolutely certain that all five (5) NSGO NFs will indeed participate at the time the Program is effective and upon approval of the SPA.

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[1] R.S. 46:1064(a) , R.S. 46:1074(a) and R.S. 46:1077.
[2] §1902(w)(6)(A) of the Act.
[3] R.S. 46:1064(a) and 46:1072(2).
[4] R.S. 46:1064.
[5] R.S. 46:1053(A).

We also indicated in our IRAI Responses #24 – 28 and RAI Responses #1, and #10 – 12 that public NSGO entities may wish to own or operate nursing facilities that are currently private, but that, upon the public NSGO entity acquiring the ownership and operation of the nursing facility, the NF(s) would become NSGO NF(s). However, we do not know how many of these entities would choose to participate or when. These private nursing facilities would have to undergo a change of ownership ("CHOW") to become owned or operated by a NSGO entity, such as a HSD, which has the authority to operate nursing facilities.[6] As a result of the CHOW, the acquiring NSGO entity would be the license holder, be bound by the Medicare and Medicaid provider agreements, exercise governance over the nursing facility and be ultimately liable for it. As stated in the RAI Response, the Department understands it is responsible for ensuring that the funding arrangements are appropriate, consistent with the SPA and relevant Federal laws, which is why, as part of the Department's review of any additional NFs becoming NSGO NFs, the Department will carefully scrutinize the circumstances resulting in the NSGO NF's new eligibility for the supplemental payment(s), to ensure the NSGO NF meets all relevant Federal and state criteria.

The State Plan and the State's responses in its' IRAI Response and RAI Response clearly explain the conditions under which supplemental payments will be made. Supplemental payments will be made in accordance with SPA 14-0041 when a NF that is owned or operated by a NSGO entity (NSGO NF), enters into an IGT agreement with the Department to voluntarily participate in the Program and receive supplemental payments. The Department will scrutinize any NSGO NF eligible for and desiring to participate in the Program to ensure the NSGO NF and its NSGO entity owner/operator meet Federal and state criteria and can make a permissible IGT for the non-Federal share of the supplemental payment.

2. Intergovernmental Transfer Agreement and Non-Federal Share.

In the Disapproval Letter, CMS stated that because Louisiana could not provide copies of any signed Intergovernmental Transfer ("IGT") agreements executed by the non-state government entities, CMS could not determine from the state plan the amount of the payments, and therefore could not determine the amount of the non-Federal share to be provided by the non-state government entities. At the time of the State's RAI Response, there were no final and executed IGT agreements available to submit to CMS. However, in the RAI Response, the State stated that a copy of the draft agreement would be provided to CMS once completed. The State is troubled that CMS did not give the Department an opportunity to submit a draft IGT agreement since the time of the RAI Response, and did not request a draft version of the IGT agreement before disapproving the SPA. Rather, the State believes CMS preemptively disapproved the SPA based on this lack of IGT agreement, which had not yet been completed in even draft form. Since the RAI Response, the Department has completed a draft version of the IGT agreement that it anticipates will be substantially similar to that IGT agreement which any NSGO entity owning or operating a NF (NSGO NF), and seeking to participate in the supplemental payment program, will enter into. Please see attached Exhibit 4 for this draft IGT agreement.

Attached is an analysis of the Fiscal Impact (Federal and non-Federal share) of the Program, based on the assumption that all five (5) NSGO NFs that are currently eligible under SPA 14-0041 will enter into an IGT agreement to participate in the Program and receive supplemental

[6] HSDs are authorized to own nursing facilities under R.S. 46:1064(a) , R.S. 46:1074(a) and R.S. 46:1077.

payments (attached as Exhibit 5). This analysis estimates the amount of the payments, and amount of non-Federal share to be provided by the NSGO entities.

3. IGT and Source of Transferred Funds is Permissible under §1903(w)(6)(A).

CMS also stated that because CMS did not receive supporting documentation to indicate that the source of the transferred funds is permissible, CMS could not conclude that the IGTs from non-state government entities were of the nature authorized by §1903(w)(6)(A) to be used as the non-Federal share of claimed expenditures. Although the IGT agreements have not been executed, the State has assured CMS in its RAI Response that the NSGO entity that owns and/or operates the NSGO NF will enter into the IGT agreement and make the IGT. The State has assured CMS in both its IRAI Response and RAI Response that the NSGO entities have the ability under both state and Federal law to fund the IGT as they are political subdivisions and public entities with the authority to levy taxes and issue bonds. The IGT from the NSGO entity will be funds "derived from State or local taxes transferred from or certified by units of government within a State" in accordance with §1903(w)(6)(A) of the Act.

4. Use of Only IGTs.

In the Disapproval Letter, CMS stated that to the extent that the transferred funds do not fall within the IGT exception, they do not appear to be imposed broad-based and uniform across the class of nursing facilities, and therefore CMS is unable to determine that the financing arrangements are consistent with §1903(w) of the Act and 42 CFR 433.54 and 433.68. As described above and as supported by the draft IGT agreement provided at Exhibit 4, the source of the funds will be permissible IGTs. The IGT will be permissible as the non-Federal share of claimed expenditures will be financed with funds "derived from State or local taxes transferred from… units of government within a State as the non-Federal share…", consistent with §1903(w)(6)(A) of the Act. A provider tax or provider donation will not be used for the non-Federal share.

As described above, the NSGO entities (hospital services districts) have the ability to fund the IGT under state law as they are public political subdivisions with the authority to levy taxes and issue bonds, as well as having the authority to own or operate nursing facilities.[7] The State is not proposing a provider tax or provider donation under §1903(w) of the Act, and therefore the issues of broad-based, uniform, and hold harmless are not at issue for SPA 14-0041, as further addressed in RAI Response #1. Indeed, as CMS requested in the IRAI, the State added the following language to SPA 14-0041 "[n]o payment under this section is dependent on any agreement or arrangement for providers or related entities to donate money or services to a governmental entity."

5. Adequate Funding Now and in Future Years for the Non-Federal Share.

CMS stated that it could not conclude adequate funding is available now or in future years for the non-Federal share of expenditures for the services provided under SPA 14-0041. As the State has previously stated, the Program will be funded with permissible IGTs provided by NSGO entities. The State reassures CMS that there will be adequate funding for the non-Federal share of

[7] HSDs are political subdivisions under R.S. 46:1064(a) and 46:1072(2) and authorized to levy taxes and issued bonds under R.S. 46:1064. HSDs are authorized to own nursing facilities under R.S. 46:1064(a), R.S. 46:1074(a) and R.S. 46:1077.

expenditures from state resources, or from local resources (IGT). As HSDs have the statutory authority to levy special maintenance taxes, incur debt and issue bonds therefore, as well as to issue hospital revenue bonds, the HSDs have adequate resources to fund the permissible IGTs.[8] Any lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services under SPA 14-0041, in accordance with §1902(a)(2) of the Act. Such assurance is consistent with all other supplemental payments programs in Louisiana and other states that are funded with IGTs.

As addressed in IRAI Response #46, the State has assured CMS that the permissible IGTs will be voluntarily transferred from NSGO entities and that regardless of the amount of funds transferred, the NFs will continue to provide quality care and services as required by 1902(a)(2) of the Act and the Louisiana Medicaid State Plan. The amount, duration, scope or quality of care and services will not be lowered as a result of any lack of adequate funds from local sources, but rather the care will be provided through the base rate and any amount of supplemental payments able to be paid. Indeed, as described in RAI Responses #5 and #8, the supplemental payment will be utilized to further improve quality of care and to help develop better outcomes of care and systems of care for Louisiana's aged and Medicaid-eligible public nursing facility patients.

Based on SPA 14-0041, the State's IRAI Response and the above information, we request that you reconsider the issue of whether SPA 14-0041 conforms to the requirements for approval, and reverse Mr. Andrew M. Slavitt's disapproval decision.

Respectfully submitted,

J. Ruth Kennedy
Medicaid Director

JRK/DAB/MVJ

Attachments (4)

c: Darlene Budgewater
Ford Blunt
Tamara Sampson

[8] RS 46:1064.

Bobby Jindal
GOVERNOR

Kathy H. Kliebert
SECRETARY

State of Louisiana

Department of Health and Hospitals
Office of the Secretary

December 30, 2014

Bill Brooks
Associate Regional Administrator
Division of Medicaid & Children's Health
DHHS/Centers for Medicare and Medicaid Services
1301 Young Street, Room #833
Dallas, Texas 75202

Dear Mr. Brooks:

RE: Louisiana Title XIX State Plan
Transmittal No. 14-0041

I have reviewed and approved the enclosed Louisiana Title XIX State Plan material.

I recommend this material for adoption and inclusion in the body of the State Plan.

Sincerely,

Kathy H. Kliebert
Secretary

Attachments (2)

Bienville Building • 628 North 4th Street • P.O. Box 629 • Baton Rouge, Louisiana 70821-0629
Phone #: 225/342-9509 • Fax #: 225/342-5568 • *WWW.DHH.LA.GOV*
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DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER: **14-0041**

2. STATE: **Louisiana**

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
November 22, 2014

5. TYPE OF PLAN MATERIAL *(Check One)*:

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate Transmittal for each amendment)*

6. FEDERAL STATUTE/REGULATION CITATION:
42 CFR 447, Subpart C

7. FEDERAL BUDGET IMPACT:
a. FFY **2015** **$83,380.73**
b. FFY **2016** **$100,191.78**

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Attachment 4.19-D, Page 9.m
Attachment 4.19-D, Page 9.m(1)
Attachment 4.19-D, Page 1
Attachment 4.19-D, Page 1a
Attachment 4.19-D, Page 1b

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*:

NONE – New Page
NONE – New Page
Same (TN 95-01) – Remove
Same (TN 95-01) – Remove
Same (TN 93-08) – Remove

10. SUBJECT OF AMENDMENT: **The SPA proposes to amend the provisions governing the reimbursement methodology for nursing facilities to adopt provisions for supplemental Medicaid payments to qualifying non-state, government-owned or operated nursing facilities that enter into an agreement with the department.**

11. GOVERNOR'S REVIEW *(Check One)*:

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
☒ OTHER, AS SPECIFIED:
The Governor does not review state plan material.

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:
Kathy H. Kliebert

14. TITLE:
Secretary

15. DATE SUBMITTED:
December 30, 2014

16. RETURN TO:

J. Ruth Kennedy, Medicaid Director
State of Louisiana
Department of Health and Hospitals
628 N. 4th Street
PO Box 91030
Baton Rouge, LA 70821-9030

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

18. DATE APPROVED:

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

22. TITLE:

23. REMARKS:

FORM HCFA-179 (07-92)

LOUISIANA TITLE XIX STATE PLAN
TRANSMITTAL #: 14-0041
TITLE: Nursing Facilities Reimbursement Methodology - Supplemental Payments (UPL)
EFFECTIVE DATE: November 22, 2014

FISCAL IMPACT:
Increase

	year	% inc.	fed. match	*# mos	range of mos.	dollars
1st SFY	2015			7.3	November 22, 2014 - June 30,2015	$94,412,876
2nd SFY	2016	3.0%		12	July 2015 - June 2016	$159,855,226
3rd SFY	2017	3.0%		12	July 2016 - June 2017	$164,650,883

*#mos-Months remaining in fiscal year

Total Increase in Cost FFY 2015

SFY 2015 $94,412,876 for 7.3 months November 22, 2014 - June 30,2015 $94,412,876

SFY 2016 $159,855,226 for 12 months July 2015 - June 2016
$159,855,226 / 12 X 3 July 2015- September 2015 = $39,963,807
$134,376,683

FFP (FFY 2015) = $134,376,683 X 62.05% = $83,380,732

Total Increase in Cost FFY 2016

SFY 2016 $159,855,226 for 12 months July 2015 - June 2016
$159,855,226 / 12 X 9 October 2015 - June 2016 = $119,891,420

SFY 2017 $164,650,883 for 12 months July 2016 - June 2017
$164,650,883 / 12 X 3 July 2016 - September 2016 = $41,162,721
$161,054,141

FFP (FFY 2016)= $161,054,141 X 62.21% = $100,191,781

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE OR SERVICE LISTED IN SECTION 1905(a) OF THE ACT THAT ARE INCLUDED IN THE PROGRAM UNDER THE PLAN - ARE DESCRIBED AS FOLLOWS:

Supplemental Payments

A. Effective for dates of service on or after November 22, 2014, any nursing facility that is owned or operated by a non-state governmental entity may qualify for a Medicaid supplemental payment adjustment, in addition to the uniform Medicaid rates paid to nursing facilities.

B. The supplemental Medicaid payment to a non-state, government-owned or operated nursing facility shall not exceed the facility's upper payment limit (UPL) pursuant to 42 CFR 447.272.

C. Payment Calculations. The Medicaid supplemental payment adjustment shall be calculated as follows. For each state fiscal year (SFY), the Medicaid supplemental payment shall be calculated as the difference between:

1. The amount that the department reasonably estimates would have been paid to nursing facilities that are owned or operated by a non-state governmental entity using the Medicare Resource Utilization Groups (RUGs) prospective payment system. For each Medicaid resident that is in a nursing facility on the last day of a calendar quarter, the minimum data set (MDS) assessment that is in effect on that date is classified using the Medicare RUGs system. The Medicare rate applicable to the Medicare RUG, adjusted by the Medicare geographic wage index, equals the Medicaid resident's estimated Medicare rate. A simple average Medicare rate is determined for each nursing facility by summing the estimated Medicare rate for each Medicaid resident in the facility and dividing by total Medicaid residents in the facility; and

2. The Medicaid per diem rate for nursing facilities that are owned or operated by a non-state governmental entity. The Medicaid rate shall be adjusted to include laboratory, radiology, and pharmacy services to account for program differences in services between Medicaid and Medicare. The statewide average of laboratory, radiology, and pharmacy services is calculated using Medicaid cost report data.

D. Each participating nursing facility's upper payment limit (UPL) gap shall be determined as the difference between the estimated Medicare rate calculated in §20029.C.1 and the adjusted Medicaid rate calculated in §20029.C.2.

Each facility's UPL gap is multiplied by the Medicaid days to arrive at its supplemental payment amount. Medicaid days are taken from the Medicaid cost report.

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE OR SERVICE LISTED IN SECTION 1905(a) OF THE ACT THAT ARE INCLUDED IN THE PROGRAM UNDER THE PLAN - ARE DESCRIBED AS FOLLOWS:

E. Frequency of Payments and Calculations

1. For each calendar quarter, an estimated interim supplemental payment will be calculated as described in this Section utilizing the latest Medicare RUGs and payment rates and Medicaid cost reports and available Medicaid payment rates. Payments will be made to each nursing facility that is owned or operated by a non-state governmental entity and that has entered into an agreement with the department to participate in the supplemental payment program.

2. Following the completion of the state's fiscal year, the final supplemental payment amount for the state fiscal year just ended will be calculated. These calculations will be based on the final Medicare RUGs and payment rates and the most recently reviewed Medicaid cost reports and Medicaid payment rates that cover the just ended state fiscal year period. The final supplemental payment calculations will be compared to the estimated interim supplemental payments and the difference if positive will be paid to the non-state governmental entity, and if negative, collected from the non-state governmental entity.

February 18, 2015

State Plan Amendment – IRAI Response
TN 14-41 Nursing Facilities-Reimbursement Methodology Supplemental Payments
Effective Date: November 22, 2014

Below are our responses to questions related to LA SPA 14-0041:

FORM-179

1. Form 179, Block 7 – Please provide a detailed analysis of how the FFP determination was made and provide supporting documentation of the calculation for Federal Fiscal Year (FFY) 2015 and 2016.

   Response: Please see the attached analysis of how the Federal Financial Participation (FFP) determination was made and the supporting documentation of the calculation. (Attachment 1)

   In the FFP determination, 75 nursing facilities (NFs) were estimated for FFY 2015 and 100 NFs were estimated for FFY 2016. However, there are currently only five non-state owned or operated nursing facilities (NSGO NF) eligible under transmittal number (TN) 14-0041, and it would be more appropriate to provide a FFP determination for only the five NSGO NFs that are currently eligible under TN 14-0041. The inclusion of 75-100 NFs in the FFP determination presumes a hypothetical number of transactions as well as the timing for any such transactions. Any future transactions will be subjected to scrutiny under state and federal laws applicable to changes of ownership (CHOW), and will include scrutiny of whether the nursing facility is ultimately owned or operated by an entity that qualifies as an NSGO under applicable law.

EFFICIENCY, ECONOMY, AND QUALITY OF CARE

2. SPA amendment LA14-0041 proposes to establish a new supplemental payments methodology for non-state nursing homes. Section 1902(a) (30) (A) of the Act requires that payment rates must be consistent with "efficiency, economy and quality of care." Please justify how the establishment of payments is consistent with the principles of "efficiency, economy, and quality of care."

   Response: The establishment of the supplemental payment methodology for NSGO NFs is consistent with the principles of "efficiency, economy, and quality of care." The five currently eligible facilities are located in rural areas and provide care to an underserved population. These facilities have a large population of Medicaid patients with high acuity who are in need of high quality and efficient care. These facilities have a higher than average occupancy rate for the state and also provide skilled nursing care in close cooperation with small, rural hospitals, which are disproportionately in precarious financial condition, and both will benefit from efficiencies and resources to improve care for Medicaid patients. Additional resources for these NSGO nursing facilities will facilitate the provision of better Medicaid patient care which, in turn, will provide assistance for the NSGO hospitals.

The State of Louisiana ranks low among the states by most measures of poverty, and among the highest in its percentage of frail and chronically ill elderly requiring greater acuity of care. It is anticipated that this program will also provide resources that enhance services for this large, high acuity population and will help bridge some of the gaps that occur on the continuum between nursing facilities and hospitals. This will facilitate better coordination of care, better transfer and discharge relationships between nursing facilities and hospitals, and reduced hospital readmissions.

SIMPLICITY OF ADMINISTRATION

3. Section 1902(a) (19) of the Act requires that care and services will be provided with "simplicity of administration and the best interest of the recipients." Please explain why this amendment is consistent with simplicity of administration and in the best interest of the nursing home recipients.

   Response: Louisiana Medicaid's contractor has extensive experience with supplemental payments in similar programs around the country, so administration of the program will be efficiently performed. The supplemental payments are also calculated using criteria that are familiar to operators and state and federal administrators, and they are tied to care and service issues that directly relate to intended care and desired outcomes. The supplemental payments to be paid to eligible NSGO NFs under TN 14-0041 are focused on providing participating facilities with additional resources to improve the quality of care and services provided to Medicaid patients and to improve outcomes.

LEGISLATION

4. Please clarify if the State, Parish, or a Hospital Service District has issued any proposals or enacted any legislation to support the new supplemental payments methodology for non-state nursing homes. Please submit that documentation for our review.

   Response: The State, parish, or a hospital services district (HSD) has neither issued any proposals nor enacted any legislation to support the new supplemental payments methodology for non-state nursing homes.

STATE PLAN LANGUAGE – 4.19-D

Please note that this methodology is not comprehensive. To comply with regulations at 42 CFR 447.252(b), the State plan methodology must be comprehensive enough to determine the required level of payment and the FFP to allow interested parties to understand the rate setting process and the items and services that are paid through these rates. Claims for federal matching funds cannot be based upon estimates or projections.

Currently, the methodology is too broad based. CMS suggests the following changes:

5. The State should remove the word 'may' when referring to qualifying provider types. The State plan language should be more specific on how the providers qualify. Please remove the word may from Attachment 4.19-A page 9m item A. See below:

   Effective for dates of service on or after November 22, 2014, any nursing facility that is owned or operated by a non-state governmental entity ***may***

qualify for a Medicaid supplemental payment adjustment, in addition to the uniform Medicaid rates paid to nursing facilities.

Response: The State has revised the State Plan to read: *Effective for dates of service on or after November 22, 2014, any nursing facility that is owned or operated by a non-state governmental entity and that has entered into an agreement with the Department to participate, shall qualify for a Medicaid supplemental payment adjustment, in addition to the uniform Medicaid rates paid to nursing facilities.*

6. CMS believes the only option for the State is to list the six non-state governmental NF for FFY 2015 on Attachment 4.19-A page 9m. Any new non-state governmental NF will require a revised State plan. CMS will carefully review these future arrangements. Please submit the revised plan pages for our review.

   As you are aware, CMS must have copies of all signed standard Cooperative Endeavor Agreements or agreements under active consideration. In addition, for future submission that State will need to provide copies of all signed 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 the two entities.

   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 had any fair market valuation. There can be no transfer of value or a return or reduction of payments reflected in these agreements.

   Additionally, 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.

   Response: We respectfully disagree with the suggestion that there be multiple revisions to the State Plan whenever additional nursing facilities might be added to the proposed program. It is unknown whether and when other nursing facilities may seek to qualify, or, if non-governmental entities may wish to acquire them. Most importantly, any additional nursing facilities seeking to qualify beyond the initial five listed below will have to undergo a thorough review and process under state and federal criteria to confirm that a CHOW has occurred. Further, as part of the review, there will be careful scrutiny to determine whether the proposed new licensed and certified provider satisfies the federal criteria as a NSGO.

The current nursing facilities that are owned or operated by non-state (parish) governmental organizations, and that are being used for financial analyses as part of these responses are:

1. **Gueydan Memorial Guest Home**
2. **Lane Memorial Hospital Geriatric LTC**
3. **LaSalle Nursing Home**
4. **Natchitoches Parish Hospital LTCU**
5. **St. Helena Parish Nursing Home**

In the event that any other nursing facility becomes owned or operated by an NSGO, the documentation and the substance of the transaction will be closely reviewed to determine whether there has been a valid CHOW. At this time, there are no transactions that we are aware of, hence no transaction documents to share or analyze. If an NSGO seeks participation in the proposed program, the transaction documents will be carefully reviewed to make sure the entity is an NSGO, that it "owns or operates" the nursing facility for licensure and certification purposes, and it agrees to comply with any other standards for the program. One of the issues that will be carefully reviewed will be any financial arrangements surrounding the terms and conditions under which the NSGO "owns or operates" the facility. As part of that, fair market valuation criteria may be an important issue to review. Further, the owner and operator will need to satisfy federal NSGO standards, including that it is eligible to make permissible IGTs in compliance with applicable laws, will exercise appropriate governance over the acquired entity, and becomes ultimately liable for the operations of the entity.

7. Please clarify why the state needs to make an adjustment to the supplemental payment as specified in 4.19-A page 9m Item C2. See below:

> *The Medicaid per diem rate for nursing facilities that are owned or operated by a non-state governmental entity. The Medicaid rate shall be adjusted to include laboratory, radiology, and pharmacy services to account for program differences in services between Medicaid and Medicare. The statewide average of laboratory, radiology, and pharmacy services is calculated using Medicaid cost report data.*

Response: An adjustment to the calculation of the upper payment limit (UPL) is necessary to account for the differences in coverage between the Medicare Prospective Payment System (PPS) rate and what Louisiana Medicaid covers within the daily rate provided above. Certain nursing facility laboratory, radiology, and pharmacy services are paid outside of the Medicaid daily rate through a separate Medicaid fee schedule. It is necessary to account for these payment differences between the Medicare PPS rate and the Medicaid daily rate so as not to overstate the gap between Medicare and Medicaid payments in the upper payment limit calculation.

8. In prior telephone conversation, CMS was advised that the non-federal share would be through an intergovernmental transfer (IGT). CMS wants the State's assurance regarding

financial transactions including IGT. The following sentence should be included in the reimbursement methodology:

> "No payment under this section is dependent on any agreement or arrangement for providers or related entities to donate money or services to a governmental entity."

Response: The language has been added. Please see Attachment 4.19-D, Page 9.m., C, 3.

9. Did the State receive any feedback or complaints from the public regarding the current proposal or about the changes to future NH arrangements? If so, what were the concerns and how were they addressed and resolved?

Response: No.

Please clarify the additional questions related to the new supplemental payments:

10. Please justify why Louisiana needs to pay supplemental payments to non-state nursing facilities.

Response: Over the past several years, Louisiana's nursing facilities have been particularly affected by Hurricane Katrina and other storms that have both damaged their structures and increased the demands to meet the growing care needs of the expanding poor, chronically-ill population. Base level Medicaid per diem rates have been unable to fully respond to those ongoing challenges as well as meet the needs further exacerbated by reduced lengths of stay in hospitals and emphasis on better providing the full continuum for efficient and effective patient care. Supplemental payments will better position these nursing facilities financially and better position them to meet the high acuity needs of the large, qualified population. In addition, the 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.

11. Why do these payments need to be made to these specific providers?

Response: The five NSGO NFs are located in rural, underserved areas. These NSGO NFs are generally in small towns with high Medicaid populations (approximately 80 percent of residents). Their patient population is extremely poor and these facilities serve those with the greatest needs. Public facilities have a disproportionate share of indigent patients. These supplemental payments will help compensate for the cost of the Medicaid patients that have more acute, and more costly needs that these NSGO NFs meet and exceed. The rural hospitals in the state are also facing precarious financial conditions, so providing the supplemental payments to the NSGO NFs will relieve some of the pressures on those hospitals and enhance the delivery of efficient and economic care, along with the ability to implement further quality initiatives.

12. Why has Louisiana decided to target these particular providers to the exclusion of other providers of the same services?

    Response: As stated in our response to question 11, NSGO NFs and their hospital partners have a high Medicaid patient population with very high acuity and needs.

13. Does the state expect that these payments will positively impact access to care or quality of care?

    Response: Yes, the State expects these payments will positively impact quality of care.

14. If it is to improve access, please provide data that shows there is an access issue.

    Response: N/A

15. What outcome does the state hope to achieve by targeting payments to non-state nursing home providers?

    Response: The State hopes that targeting payments to NSGO NF providers will encourage shared information between the NF and the NSGO, facilitate better coordination of care, enhance transfers and discharges between facilities that can be the source of trauma and care incidents, and help reduce hospitalization and readmission rates. All of these support efficiency, economy and quality of care goals.

16. Will the state monitor the impact of the supplemental payments with respect to the expected outcomes?

    Response: Yes.

17. How will the state measure if targeting payments resulted in the desired outcome?

    Response: The State will monitor and measure various performance metrics and outcome goals through the licensure and certification survey process, review of hospital readmission rates, and review of the CMS quality measures. The State also expects to establish outcome goals that can be supplemented to address newly arising issues.

18. How do the supplemental payments compare to the base payments?

    Response: These supplemental payments are the difference between the amount Medicaid pays and the UPL, and will vary based on the Resource Utilization Group (RUG) scores.

19. Has the State done any analysis to increase the base payments to these specific providers?

    Response: No state general fund is available for base rate increases.

HOSPITAL SERVICE DISTRICT (HSD)

In a telephone conversation, CMS was advised that Hospital Service Districts would be buying private nursing homes. CMS has questions around the

20. Currently, there are six non-state nursing facilities licensed in Louisiana. Do these six facilities have any lease or management arrangements with any Hospital Service District?

    Response: Currently, there are five NSGO NFs licensed in Louisiana. To the State's knowledge, none of the five NSGO NFs have lease or management arrangements with any HSD.

21. Please describe the arrangement(s) which these six non-state governmental NF currently operates.

    Response: See above.

22. Do any of the six non-state nursing facilities have any management arrangement?

    Response: No.

23. Please disclose all entities with which the State is in discussions concerning the actions proposed under this SPA and the intended outcome of such discussions.

    Response: The State has only specifically discussed TN 14-0041 with the nursing home trade associations that represent Louisiana nursing homes and their consultant, the law firm of Krieg Devault.

    The Department has only generally discussed NSGO NF supplemental payments with the following parties: Courtyard of Natchitoches, The Sisung Group, Sellers Dorsey and Sullivan Stolier Law Firm. None of these have been included in specific talks regarding TN 14-0041.

24. Please provide supporting documentation on how the hospital service districts were initially set-up.

    Response: HSDs are authorized under R.S. 46:1072 and R.S. 46-1051 to be established by the police juries of parishes or by cities, parishes, or other political subdivisions of the State of Louisiana or hospitals owned or operated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (LSU).

25. Have the hospital service districts arrangements changed to allow for purchasing of private nursing homes?

    Response: No.

26. What powers are authorized to the hospital service districts? Please provide documentation from the state or parish legislation to support their authorities.

Response: HSDs have many statutorily enumerated powers. The following are key powers potentially relevant to TN 14-0041:

- **HSDs are authorized to "cooperate with other public and private institutions and agencies engaged in providing hospital and other health services to residents of the district, among other statutorily enumerated objects." (R.S. 46:1052(5)).**
- **HSDs are authorized to "participate so far as circumstances may warrant in any activity designed and conducted to promote the general health of the community." (R.S. 46:1052(4)).**
- **HSDs are "political subdivisions of the State, and for the purposes of … purchasing, acquiring, constructing and maintaining hospitals, nursing homes, …Necessary to carry out the purposes of this Chapter." (R.S. 46:1064(A)).**
- **HSDs "shall be subdivisions of the state of Louisiana within the meaning of the laws of Louisiana relating to the voting and levy of special maintenance taxes incurring debt and issuing bonds therefore,… and shall be authorized to issue hospital revenue bonds…" (R.S. 46:1064(A)).**
- **HSD commissions, which govern the HSDs, are authorized to acquire medical office buildings and facilities, and negotiate the lease of such facilities, as well as contract with entities to offer, provide, promote, establish, or sell any hospital health services. (R.S. 46:1074(A) and R.S. 46:1077).**

27. What are the hospital service districts main functions and responsibilities?

Response: HSDs main functions and responsibilities are enumerated in R.S. 46:1052 et. al., and include, but are not limited to, the following objects and purposes:

- **To own and operate hospitals for the care of persons suffering from illnesses or disabilities;**
- **To administer other activities related to rendering care to the sick and injured or in the promotion of health;**
- **To promote and conduct scientific research and training related to the care of the sick and injured;**
- **To participate in activities designed and conducted to promote the general health of the community; and**
- **To cooperate with other public and private institutions and agencies engaged in providing hospital and other health services to residents of the district.**

28. Do hospital service districts have taxing authority or the authority to issue bonds/debt?

Response: Yes. R.S. 46:1064, referenced above, authorizes HSDs to levy taxes and issue bonds.

29. Please provide example(s) completed or proposed cost reports for a NF and that is or will be operated or owned by a hospital service district.

Response: Cost reports will not be changed for NSGO NFs operating under the proposed program.

30. Who will maintain the license of the NF?

Response: The owner or operator of the NF, which is the NSGO, will maintain the license of the NF.

31. Will another entity owns the property and equipment of the NF?

Response: Currently, the NSGO, which is the parish, owns the property and equipment of the NFs. It is not essential for a NF to own the property and equipment used in its operation. 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 ("CHOW") review process and agreement to qualify for supplemental payments. In all instances, the NSGO, as the licensed and certified provider, will be the owner or operator of the facility.

32. Will any management companies also own the property and equipment of the NFs?

Response: Currently, the NSGO, which is the parish, owns the property and equipment of the NFs. It is possible for a NF to enter into certain management agreements. In the future, the ownership of the property and equipment of any potentially eligible NSGO NF will be reviewed as part of the CHOW review process and agreement to qualify for supplemental payments. In all instances, the NSGO will be the owner and operator of the facility.

33. Are any of the management companies affiliated with or related to the NFs or the hospital service districts that own the license of the NFs?

Response: The State is not aware of any management companies that are affiliated with or related to the current NSGO NFs.

34. Please confirm that any costs booked on the NF cost reports are not duplicated on the hospital service district cost reports.

Response: Hospitals submit cost reports to Louisiana Medicaid using the Medicare hospital cost report Form CMS 2552-10. Some Medicare hospital cost reports are audited by the State and the Medicare hospital cost reports are subject to review by Medicare. Hospitals complete the Medicare cost report form in accordance with Medicare cost reporting guidelines and allowable cost principles. All nursing home cost reports are audited/desk reviewed annually.

35. How will the State monitor the cost reports to assure that there is no duplication of costs? What systems are in place to prevent duplication of costs?

Response: Hospitals submit cost reports to Louisiana Medicaid using the Medicare hospital cost report Form CMS 2552-10. Some Medicare hospital cost reports are audited by the Department's hospital program and its auditing contractor. Also,

the Medicare hospital cost reports are subject to review by Medicare. Hospitals complete the Medicare cost report form in accordance with Medicare cost reporting guidelines and allowable cost principles. All nursing home cost reports are audited and/or desk reviewed by the Department and its auditing contractor.

36. Please provide example audited financial statements of the HSD and the management company of the NF.

    Response: As addressed in question 20 (above), of the five NSGO NFs licensed in Louisiana, there are no management agreements.

37. Please explain which entity is the enrolled provider with the state. For example, is the HSD hospital enrolled as the NF provider?

    Response: The NSGO entity is the enrolled provider with the state.

38. Please provide an example enrollment agreement of a NF that partners with a HSD.

    Response: N/A.

39. If the NF provider is related to the management company, then are the management services only recognized at cost on the NF's cost report?

    Response: As the five NSGO NFs licensed in Louisiana are not related to a management company, there are no related management services to be recognized on the NF's cost report.

40. Please provide an explanation for how any management fees, which is typically a percentage based on net patient revenue, is incorporated in the NF per diem rate.

    Response: The five NSGO NFs utilize no management companies and pay no management fees. In the event a NSGO NF does pay management fees, such fees will be treated in accordance with the Louisiana Medicaid State Plan Attachment 4.19-D and applicable regulations. If the Department determines the management company and NSGO NF are related parties for purposes of Medicaid cost reporting, the management fee will be entirely backed out as an adjustment and replaced with the allowable cost to the management company on the appropriate cost report lines. These allowable costs, which will be the actual costs to the management company, will then be included in the calculation of the nursing facility per diem rate in the applicable rate components. If the Department determines such entities are not related parties for purposes of Medicaid cost reporting, the management fee will be subject to a reasonableness test.

41. CMS has a few questions related to PASRR requirements. Will providers bill traditional Fee for Service (FFS) for PASRR? Will the NF continue to perform the required PASRR activities, including the provision of identified specialized services?

    Response: The Department does not intend to change the way providers perform or bill for Preadmission Screening and Resident Review (PASRR).

INTERGOVERNMENTAL TRANSFERS (IGT)

42. What is the source of all funds that will be transferred? Are they from tax assessments, special appropriations from the State to the county/city or some other source? Please provide the county/city legislation authorizing the IGTs. Please demonstrate that the State has permissible sources of funding under 1903(w)(6)(A).

    Response: Funds will come from the NSGO entities, which are eligible to make permissible IGTs of funds under Social Security Act §1903(w)(6)(A).

    The State has no knowledge of county/city legislation.

43. Does the State anticipate more than the six non-state NF participating in this arrangement? Please submit a list of all participating non-state NF, private NF and HSD transferring entities willing to participate in this arrangement.

    Response: The five NSGO NFs currently eligible under TN 14-0041 are:

    1. **Gueydan Memorial Guest Home**
    2. **Lane Memorial Hospital Geriatric LTC**
    3. **LaSalle Nursing Home**
    4. **Courtyard of Natchitoches**
    5. **St. Helena Parish Nursing Home**

    The federal budget impact (box 7 of Form HCFA-179) for the submitted TN 14-0041 contemplates transactions that may or may not occur, which may or may not result in more NSGO NF's being eligible under TN 14-0041. Due to the variable nature of projecting, we are unable to forecast whether, which, or how many additional NSGO NFs will be eligible or willing to participate under TN 14-0041 in the future. Any additional NSGO NFs that seek to participate under TN 14-0041 in the future will have to come through the CHOW screening process as further described in number 6 on page 3.

44. Does the State know the dollar amount that the transferring entities will IGT? Please describe how the HSD are related/affiliated to the transferring entity and provide the names of all owners of the participating hospitals.

    Response: No. See above.

45. Does the state agree to provide certification from the transferring entities that the IGTs are voluntary?

    Response: Yes.

46. Section 1902(a)(2) of the Act 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 explain how this proposal complies with this provision.

Response: The IGTs are voluntarily transferred from NSGOs. Regardless of the amount of funds transferred, the NFs will continue to provide quality care and services as required by 1902(a)(2) and the Louisiana Medicaid State Plan. The amount, duration, scope, or quality of care and services will not be lowered as a result of any lack of adequate funds from local sources. Rather, the care will be provided through the base rate and any amount of supplemental payments able to be paid.

UPPER PAYMENT LIMIT (UPL)

47. The current SFY 2014 reflects a possible $4 million available for non-state nursing facilities. However, the CMS-179 reflects FFP in the amount of $83 million for SFY 2015 and $100 million for SFY 2016. Regulations at 42 CFR 447.272 require that payments in the aggregate will not exceed a reasonable estimate of what Medicare would pay for similar services.

    Please provide an UPL demonstration applicable to the payments for the future rate period (i.e. SFY 2015 and SFY 2016) for all classes (state government, non-state government, and private).

    The UPL demonstrations should include a comprehensive narrative description of the methodology (step by step) used to determine the UPL. The demonstration should also include a spreadsheet with provider specific information that starts with the source data and identifies the numerical result of each step of the UPL calculation. All source data should be clearly referenced (i.e., cost report year, W/S line, columns, and claims reports, etc…) in the demonstration. The State should also keep all source documentation on file for review.

    Response: The current SFY 2014 reflects a possible $4 million available for the five NSGO NFs currently eligible for TN 14-0041.

    In arriving at FFP of $83 million for SFY 2015 and $100 million for SFY 2016, the CMS-179 hypothetically contemplates 75 (SFY 2015) and 100 (SFY 2016) transactions that may or may not occur. Further, any transaction will be scrutinized for purposes of complying with CHOW requirements as well as satisfying NSGO standards. As a result, it is uncertain whether there will be any additional or any specific number of NSGO NFs being eligible for TN 14-0041.

    Please find attached the UPL demonstration and guidance applicable to the payments for the future rate period (SFY 2015 and SFY 2016) for all classes (state government, non-state government, and private) based on their current status and eligibility for TN 14-0041. (Attachments 2, 2a, and 2b)

FUNDING QUESTIONS

The following questions are being asked and should be answered in relation to all payments made to all providers under Attachment 4.19-A of your State plan, including payments made outside of those being amended with this SPA.

If you have already provided this information in response to other requests for additional information, you may refer us to that response. Please indicate the SPA and date of the response.

48. 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.)

    Response: Providers receive and retain 100 percent of the payments, including the state and federal share. No portion is returned to the state.

49. 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 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 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,
    (v) whether the certifying or transferring entity received appropriations (identify level of appropriations).

Response: The State share of UPL supplemental payments will be funded through voluntary CMS compliant IGTs from local governmental entities. The entities currently known to be eligible for doing this are:

1. **Gueydan Memorial Guest Home**
2. **Lane Memorial Hospital Geriatric LTC**
3. **LaSalle Nursing Home**
4. **Courtyard of Natchitoches**
5. **St. Helena Parish nursing Home**

Louisiana R.S. 46:1064 authorizes hospital service districts such as these to levy taxes and issue bonds.

These entities receive all their funds from local appropriation and fee-for-service billing. There is no known state general fund appropriation.

50. 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.

Response: The attached UPL demonstrations show the amount available to be paid for each provider.

51. 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.

<u>RESPONSE</u>: The UPL demonstration for privately owned or operated nursing facilities is attached. The calculation of the Medicare upper payment limit for nursing facilities involves three components. The methodology utilized to calculate the upper payment limit involved:

1. **Estimating what would have been paid for Louisiana Medicaid nursing facility residents using Medicare payment principles.**

2. **Identifying what was actually paid for Louisiana Medicaid nursing facility residents.**

3. **Adjusting for the difference between component one and two for coverage differences between Medicare and Louisiana Medicaid.**

There are many variables within these three major components. The following is a detailed description of how each component was calculated:

<u>Estimating Medicaid Rates using Medicare Payment Principles</u>

The first step in calculating the Medicare upper payment limit is to estimate what Medicaid would pay if they followed Medicare payment principles. As Medicare has moved to the prospective payment system, this step involves calculating Medicare rates based on Medicaid acuity data. Following is a summary of the steps involved:

Using each resident's minimum data set assessment, the applicable RUG-III grouper code for Medicaid residents was identified. A frequency distribution of Medicaid residents in each of the Medicare RUG classification categories was then generated.

After the Medicaid resident frequency distribution was developed, rural and urban rate differentials and wage index adjustments were used to adjust the Medicare rate tables. The resulting rates were multiplied by the number of Medicaid residents in each RUG category, summed and then averaged.

Determining Actual Medicaid Rates

The actual Medicaid rates were provided from the Department. These rates were updated for each state fiscal year and reflect the rate actually paid by the Department for Medicaid residents in each of the nursing facilities.

Adjusting for Differences between Medicare Principles and Louisiana Medicaid

An adjustment to the calculation of the UPL is necessary to account for the differences in coverage between the Medicare PPS rate and what Louisiana Medicaid covers within the daily rate provided above. To accomplish this, a data file was used by the Department that detailed drug, lab, and x-ray claims that were paid on behalf of nursing facility residents for other than their routine daily care. This data was inflated to the current fiscal year.

Calculation of UPL Difference
The estimated UPL difference is then calculated by subtracting the sum of the routine Medicaid rate from the Medicare rate.

52. 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 CMS on the quarterly expenditure report?

Response: NSGO NFs are reimbursed using the same prospective payments system that is used to reimburse privately owned or operating nursing facilities. These providers are not paid in excess of the UPL as demonstrated in the UPL demonstration for non-state owned government providers and therefore are not cost settled.

State owned or operated nursing facilities are paid a prospective cost-based reimbursement rate. These cost-based rates are established from the most recently filed cost reports available when the cost-based rates are established effective July 1st of each rate year. Since these providers are paid at cost, the payments do not exceed the UPL.

Bobby Jindal
GOVERNOR

Kathy H. Kliebert
SECRETARY

State of Louisiana

Department of Health and Hospitals
Bureau of Health Services Financing

VIA ELECTRONIC MAIL ONLY

April 23, 2015

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

RE: LA SPA TN 14-0041 RAI Response
Nursing Facilities Reimbursement Methodology Supplemental Payments

Dear Mr. Brooks:

Please refer to our proposed amendment to the Medicaid State Plan submitted under transmittal number (TN) 14-0041 with a proposed effective date of November 22, 2014. The purpose of this SPA is to amend the provisions governing the reimbursement methodology for nursing facilities to adopt provisions for supplemental Medicaid payments to qualifying non-state, government-owned or operated nursing facilities that enter into an agreement with the department. We are providing the following additional information as requested in your RAI correspondence dated March 26, 2015.

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.

Response:
In the future, should a non-state governmental entity (NSGO entity), such as a hospital service district (HSD), desire to own or operate a nursing facility (NF) or an additional NF, the NF will undergo a change of ownership (CHOW) whereby the NSGO entity will become the owner and/or operator of the NF, making the NF a non-state government owned and/or operated nursing facility (NSGO NF).

As defined in 42 C.F.R. §433.54 and described in State Medicaid Director Letter (SMDL) 14-004 (May 9, 2014), a non-bona fide provider donation is a donation made directly or indirectly by a provider to a State or unit of government, that is determined to have a direct or indirect relationship to Medicaid payments, as a result of the donations being returned to the provider under a "hold harmless" provision or practice, such as: (1) the payment amount from the unit of government being positively correlated to the donation from the provider; (2) any or all of the payment amount from the unit of government varying based on the amount of the donation from the provider; or (3) the unit of government receiving the donation from the provider, guarantees the return of any portion of the donation to the provider through a payment. This is <u>not</u> what is being proposed by the Department.

As stated in paragraph #1 of this response, the NSGO entity becomes the owner and/or operator of the NSGO NF. Any financial arrangements between a NSGO entity and the former owner of the NF will not result in a non-bona fide provider donation, as no funds will be donated to the NSGO entity in return for a supplemental payment. Rather, any services or real or tangible property the former NF owner provides or transfers to the NSGO entity would be compensated based upon the fair market value of such services or property. In addition, there would be no "hold harmless" provision, as there would not be a positive correlation

between the services and property the former NF owner provides to the NSGO entity and the supplemental payments; the supplemental payments would not be conditioned on the former NF owner providing any services to the NSGO entity; and there would not be a guarantee that the former NF owner will see a return of any services or property provided to the NSGO entity through a supplemental payment. Rather, any compensation paid by the NSGO entity to the former NF owner for services or property related to the NSGO NF would be fair market value compensation for such services or property.

There are no Cooperative Endeavor Agreements (CEAs), lease agreements, Intergovernmental Transfers (IGTs), management agreements, Memorandums of Understanding (MOUs), management contracts, loan agreements, and any other agreements, neither signed nor under consideration, that would present the possibility of a transfer of value between any two entities. Due to the initial stages of this SPA, these agreements and relationships have not yet been developed.

We respectfully disagree with the suggestion that there will be multiple revisions to the State Plan whenever additional NFs might be added to the proposed program. The Department understands it is responsible for ensuring that the funding arrangements are appropriate, consistent with the SPA and relevant federal laws and therefore, as part of the Department's review of the CHOWs, the Department will carefully scrutinize the CHOWs and the CHOW questionnaire responses (see below #11) to determine whether the proposed new licensed and certified provider meets federal and state criteria as a NSGO entity.

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?

   Response:
   The number "75" was only an estimate. The Department did not discuss the programs directly with any NFs to determine the degree of interest by the NFs to enter into a CHOW transaction with a NSGO entity which then the NSGO will enter into agreements to qualify to receive supplemental payments. As we stated in our IRAI response for Question 1, as there are currently only five NSGO NFs eligible under transmittal number (TN) 14-0041, it would be more accurate to provide a FFP determination for only the five NSGO NFs that are currently eligible under TN 14-0041. Please see attached Exhibit A for the budget impact based on only five NSGO NFs for 2015/2016.

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.

Response:
The Department proposed this language to be more specific on how a provider qualifies for supplemental payments. This agreement is to ensure that the NSGO entity that owns and/or operates the NSGO NF voluntarily agrees to make the IGT and also qualifies for Medicaid supplemental payments. This agreement will be a standard template agreement. At this time, no NSGO NFs have entered into an agreement with the Department; however, a copy of the draft agreement can be provided to CMS once completed.

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?

Response:
Yes, the state does 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?

Response:
The supplemental payments will provide resources which will allow the NSGO NFs to enhance the services they already provide, thereby improving quality of care and survey and inspection results. As NFs have different areas of quality improvement needs, NSGO NFs will seek to improve quality through individualized programs and initiatives. Some quality initiatives include:

- **improving medication management and use of antipsychotic medication to ensure that they are used appropriately and any continued use of these medications is carefully monitored; and**
- **increasing NSGO NFs Registered Nurse (RN) staffing ratios.**

The additional resources will also allow the NSGO NFs to provide new enhanced services. Some additional examples of enhanced services or quality initiatives that will be implemented, based upon what is needed for better patient care, also include:

- **emergency preparedness training;**
- **efficiency and processes training; and**
- **wound care programs or certifications.**

All of these enhanced, new services will allow the NFs to improve the overall goal of quality of care, as well as reduce hospital readmissions.

In addition, any relationship between the NSGO NF and any NSGO entity will give the NSGO NF the opportunity to conduct and implement best practices regarding quality reviews, inspections and care improvement, as well as exchange expertise, in an effort to improve overall care.

The State will monitor the reduction of hospital readmissions using CMS data.

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?

Response:
No, these five NSGO NFs do not serve Medicaid patients only; however, these five NSGO NFs have high Medicaid populations averaging approximately 73 percent of residents. The five NSGO NFs are not in precarious financial conditions, but do operate on tight margins. In addition, Louisiana's median NF reimbursement rate for all payor sources is one of the lowest compared to all states, as demonstrated by a Genworth Study (please see attached Exhibit B); and Louisiana's NF Medicaid reimbursement rate is one of the lowest in the nation. These supplemental payments will provide additional resources for better patient care.

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?

Response:
The five NSGO NFs serve Medicare, Medicaid, and Private Pay populations, with Medicaid composing approximately an average of 73 percent of the total population.

All Louisiana NFs have high acuity needs as demonstrated by total activities of daily living (ADLs). Louisiana NF patients requiring assistance with activities of daily living, or total ADLs, are greater than the national average and are the 14th highest as compared to all states. In addition, Louisiana has the second highest proportion of people, age 65 and over, with any disability. The high number of elderly individuals living in poverty, coupled with the high levels of individuals that require nursing care and help with numerous ADLs, presents high acuity patients in all NFs (public and private).

8. In IRAI response for Question 13 – Please provide details on how payments will positively impact quality of care.

Response:
These payments will impact quality of care by improving the relationships between the NSGO NFs and their hospital partners, specifically with regard to coordinating care, transferring and discharging patients, and reducing hospital readmissions. NSGO NFs and their hospital partners will utilize each entity's expertise to further

refine, improve, and expand services for better patient care. In addition, NSGO NFs and their hospital partners will mutually assist each other with conducting quality reviews, inspections, and surveys in order to continually evaluate and improve quality of care.

NSGO NFs will have a greater opportunity to undertake more capital projects and implement individual quality initiatives determined to be most important to their individual facility and resident population and for which they would not otherwise have funding. These additional funds will allow NSGO NFs to develop programs tailored to specific Medicaid patient needs, such as:

- **additional educational opportunities and training for staff to improve staff services and staff-patient relationships;**
- **wound care and certification; and**
- **improving and updating the NFs current services such as medication management and RN staffing ratios.**

As also addressed in our response to #5, above, the possibilities to improve quality of care are greatly enhanced with the opportunities afforded by these supplemental payments.

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.

Response:
Louisiana's average Medicaid per diem rate for the five NSGO NFs is $156. The supplemental payment is expected to increase rates for the five NSGO NFs by an average of $39 per day.

10. In IRAI response for Questions 24 through 27 – Is the State indicating that HSDs can acquire nursing homes?

Response:
Yes. According to Louisiana law, HSDs have the authority to own or operate nursing facilities, including by acquisition.

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?

Response:
In the event a NF undergoes a CHOW with a NSGO entity that results in a NSGO NF that is potentially eligible for supplemental payments, the Department will

review such CHOW. As part of its review, the Department will ask the NSGO entity to complete a questionnaire where the NSGO entity will describe the ownership of the facility, operations, property and equipment. The questionnaire has not yet been developed, but will likely ask the preparer to answer questions and submit supporting documentation regarding:

- **the relationship between the previous owner and the new NSGO entity owner of the NF;**
- **whether the CHOW transaction is a bona fide sale or lease arising from an arm's length transaction between unrelated parties;**
- **whether the NF is owned or directly operated by a NSGO entity and whether the NSGO entity is the holder of the NF license and the signatory on the provider agreement;**
- **whether the NSGO entity is exercising governance over the NF;**
- **whether the NSGO entity that operates the NF has obligations to fund the NF's expenses, liabilities, and has ultimate liability for the operation of the NF;**
- **whether the NSGO entity that operates the NF has the ability to fund the NF; and**
- **whether the NSGO entity has the ability to make a permissible IGT.**

Such questionnaire and resulting answers will ensure that the NF's owner is an NSGO that "owns or operates" the NF for licensure and certification purposes, and that the NSGO entity agrees to comply with any other standards for the program. In addition, the questionnaire will require the individual completing the questionnaire to certify that the information provided is true, accurate and complete and that all representations have been adequately disclosed, thereby placing ultimate liability for rates calculated in the questionnaire, on the preparer.

The Department is unsure what financial transactions, leases, and agreements will occur between a NSGO entity and a private NF to affect the change of ownership, as these have not yet occurred. However, as part of the Department's review, it will carefully analyze all agreements and financial arrangements as part of its questionnaire.

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.

Response:
The current five NSGO NFs themselves, or the HSDs governing them, will be the NSGO entities funding the IGT. In the event HSDs own or operate NSGO NFs in the future, the HSD will make a permissible IGT and fund it. The HSDs have the ability to fund the IGT under state law as the HSDs are political subdivisions that have the authority to levy taxes and issue bonds. They also have authority to acquire other health care entities, such as nursing facilities.

Please consider this a formal request to begin the 90-day clock. We trust that this additional information will be sufficient to result in the approval of the pending plan amendment. We look forward to negotiating with CMS to ensure approval.

As always, we appreciate the assistance of Tamara Sampson in resolving these issues. If further information is required, you may contact Darlene A. Budgewater at Darlene.Budgewater@la.gov or by phone (225) 342-3881.

Sincerely,

J. Ruth Kennedy
Medicaid Director

JRK/DAB/MVJ

Attachments (2)

c: Ford Blunt
Darlene Budgewater
Tamara Sampson

INTERGOVERNMENTAL TRANSFER AGREEMENT

BETWEEN

[NSGO ENTITY]

AND

LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS

FOR ITS NON-STATE GOVERNMENT OWNED OR OPERATED NURSING FACILITY (INSERT INTERIM OR FINAL) PAYMENT FOR THE (INSERT PAYMENT QUARTER) QUARTER OF STATE FISCAL YEAR (INSERT STATE FISCAL YEAR) (INSERT DATE RANGE FOR THE QUARTER)

This Intergovernmental Transfer Agreement ("IGT") is entered into by the Louisiana Department of Health and Hospitals ("DHH") and [Name of NSGO Entity], a Non-State Governmental Entity, regarding the (insert interim or final) payment(s) of the Non-State Government Owned or Operated Nursing Facility UPL Payment ("Payment" or "supplemental payment") for the State Fiscal Year (insert state fiscal year). The total amount of the payments made for SFY (Insert State Fiscal Year) will not exceed its Medicare upper payment limit for the Non-State Government Owned or Operated Nursing Facilities of [Name of NSGO Entity], pursuant to federal regulation, 42 CFR 447.272, and which Payment is made in accordance with Louisiana's approved Medicaid State Plan amendment TN 14-41.

WHEREAS, in [Insert payment month and year], [Name of NSGO Entity] will make a voluntary and permissible IGT of funds in order to fund the non-federal share of the Payment.

NOW THEREFORE, in consideration of the mutual promises and covenants obtained herein, it is hereby agreed as follows:

1. In accordance with the Centers for Medicare and Medicaid Services ("CMS") approved Louisiana Medicaid State Plan amendment TN 14-41 related to supplemental payments for Non-State Government Owned or Operated Nursing Facilities, [Name of NSGO Entity] agrees to voluntarily transfer funds to DHH to be used as Medicaid matching funds for the purpose of making supplemental payments to nursing facilities and providing additional resources to assist in improving care for Louisiana's Medicaid patients. Accordingly, these matching funds are comprised of an amount to be utilized as the "non-federal share" of the supplemental payment for services provided by participating Non-State Government Owned or Operated Nursing Facilities.

2. [Name of NSGO Entity] will make an IGT of funds via check in the amount of $ [Insert IGT Amount] which are not federal funds, or are federal funds authorized by federal law to match other federal funds.

3. As permitted by State and federal laws and regulations, DHH agrees to make supplemental Medicaid payments to Non-State Government Owned or Operated Nursing Facilities. The total supplemental payment will include the "non-federal share" and the "federal funds" generated by the "non-federal share" payments. The total amount of the supplemental payment is intended to represent the difference between the Medicaid payments otherwise made to these qualifying providers and what Medicare would pay for the same or similar services.

4. The State's Payment to [Name of NSGO Entity] will be a check in the amount of $ [Insert UPL Payment Amount], which is the non-federal and federal share of the payment.

5. Payments will be made by DHH in accordance with any rules and/or regulations that apply to the Non-State Government Owned or Operated Nursing Facility Program.

6. This Agreement cannot be amended, modified, or supplemented in any respect except by subsequent written agreement signed by the parties.

7. This Agreement shall be governed by the laws of the State of Louisiana.

8. This Agreement shall be binding upon the parties hereto, and their personal representatives, heirs, assigns, and successors in interest.

IN WITNESS WHEREOF, the parties understand that by signing this Agreement that they hereby agree to the terms and conditions set forth herein.

[NAME NSGO ENTITY]: WITNESSES:

By:_____ _____
(Signature)

Name:_____ _____
(Type or Print)

Title:_____

STATE OF LOUISIANA, DEPARTMENT OF HEALTH AND HOSPITALS: WITNESSES:

By:_____ _____
(Signature)

Name: Jeff Reynolds _____

Title: Undersecretary