



*Administrator*  
Washington, DC 20201

Toby Douglas  
Director of Health Care Programs  
California Department of Health Care Services  
P.O. Box 997413, MS 0000  
Sacramento, CA 95899-7413

**OCT 27 2011**

Dear Mr. Douglas:

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

On November 18, 2010, the Centers for Medicare & Medicaid Services (CMS) disapproved these amendments because the State did not provide sufficient information concerning the impact of the proposed reimbursement reductions on beneficiary access to services as required by section 1902(a)(30)(A) of the Social Security Act (the Act). Section 1902(a)(30)(A) of the Act requires that care and services are available to Medicaid beneficiaries at least to the extent that care and services are available to the general population in the geographic area. In addition, CMS was concerned that, given the time that had elapsed since the above SPAs had been submitted, the cumulative effect of approval of and subsequent implementation of these reimbursement reductions would exacerbate beneficiary access concerns. On November 19, 2010, the State requested that CMS reconsider the disapproval of the above amendments.

On March 25, 2011, the State submitted documentation to support a demonstration of compliance with section 1902(a)(30)(A) of the Act, as it specifically relates to reimbursement rates that are sufficient to enlist enough providers so that care and services are available at least to the extent that care and services are available to the general population in the geographic area. From March 25, 2011, through approximately September 30, 2011, CMS has been working with the State to refine the information initially submitted and, as a result of this collaborative process, the State was able to provide metrics that adequately demonstrated beneficiary access. In general, these metrics included data which provided:

- Total number of providers by type and geographic location and participating Medi-Cal providers by type and geographic area
- Total number of Medi-Cal beneficiaries by eligibility type
- Utilization of services by eligibility type over time
- Analysis of benchmark service utilization where available

Data concerning these metrics were submitted for State Fiscal Years (SFYs) 2008, 2009 and 2010.

Based on the analysis described above, the State has requested that CMS approve SPAs 08-009A, 08-009B1, 08-009D. As part of the reconsideration of the above SPAs, the State has modified the SPAs to reflect that the reductions prior to 2011 will only be authorized under the plan in those years, and for those periods, during which the State actually implemented the reduction. This targeting addresses the issue we had raised earlier of retroactively implementing rate cuts which might potentially affect current access. As noted in our original letter denying the 2008 SPAs, recouping of retroactive reductions might create access problems going forward. The amendments to the 2008 State plan largely resolve this concern for periods prior to 2011.

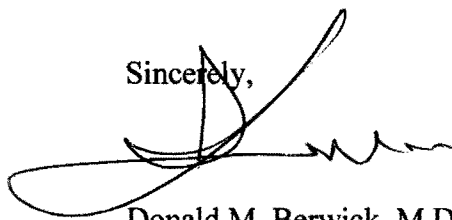
Because the State implemented some reductions, CMS was able to study the correlation between the reduction to the reimbursement of those services and the change in the above metrics from SFY 2008 – SFY 2010. Based on this analysis, including a period of rate reductions, CMS was able to conclude that the implementation of the above reimbursement reductions complied with section 1902(a)(30)(A) of the Act so that care and services are available at least to the extent that care and services are available to the general population in the geographic area. As modified, the SPAs also implement payment reductions for certain services in 2011. The retroactive implementation of rate cuts for a short time in 2011 is of far less concern than the retroactive implementation of rate cuts for several years. Nevertheless, the State demonstrated beneficiary access for SFY 2010, and also submitted a monitoring plan as part of SPA 08-009B1 by which beneficiary access will be monitored on a service-by-service basis for all the services at issue in these three SPAs. We believe that the proposed monitoring process will allow California to ensure that payment rates for 2011 are consistent with section 1902(a)(30)(A) of the Act or to promptly take corrective action if the rates prove to be insufficient. The State will monitor predetermined metrics on a quarterly or annual basis in order to ensure that beneficiary access is comparable to services available to the general population in the geographic area.

In light of the data CMS reviewed, the monitoring plan, and our consideration of stakeholder input, we have determined that these amendments comply with section 1902(a)(30)(A) of the Act and all other applicable requirements of the Act, therefore, SPAs 08-009A; 08-009B1; 08-009D have been approved, effective July 1, 2008. This approval does not affect SPA 08-009B-2 and SPA 08-019. The State has chosen not to pursue the reductions proposed via SPA 08-009B-2, therefore, we understand that the State will withdraw its formal request for reconsideration of this amendment. With regard to SPA 08-019, the State incorporated the reductions initially proposed via SPA 08-019 into the reductions proposed via SPA 08-009A, therefore, we understand that the State will also withdraw its formal request for reconsideration of SPA 08-019. The revised approved plan pages and the HCFA-179 are enclosed.

Page 3 – Toby Douglas

If you have any questions, please have your staff contact Dianne Heffron at (410) 786-3247.

Sincerely,

A handwritten signature in black ink, appearing to read 'Donald M. Berwick', with a large, sweeping flourish that loops back under the name.

Donald M. Berwick, M.D.

Enclosures

**TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL**

**FOR: HEALTH CARE FINANCING ADMINISTRATION**

1. TRANSMITTAL NUMBER: **08-009D**  
2. STATE: **California**

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  
**July 1, 2008**

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:  
~~ABx35, ABx15, and AB 1183~~  
**42 CFR 447. Subpart C**


7. FEDERAL BUDGET IMPACT:  
a. FFY 2007-2008      ~~\$ 5,463,000~~      \$(5.5M)  
b. FFY 2008-2009      ~~\$ 21,646,000~~      \$(48.1M)  
c. FFY 2009-2010      ~~\$ 289,000~~      \$(53.2M)  
d. FFY 2010-2011      ~~\$ 5,746,250~~      \$(59.9M)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  
**Attachment 4.19-D Page 15.4, 15.4a, 15.4b, 15.4c and 15.4d**

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):  
**Attachment 4.19-D Page 15.4**

10. SUBJECT OF AMENDMENT:  
1) **Reduced payment rates at 10 and 5 percent where specified, and**  
2) **Freezes 2009-2010 rates and subsequent rates at the 2008-2009 levels as mandated by Health Trailer Bill ABx4 5**

11. GOVERNOR'S REVIEW (Check One):  
 GOVERNOR'S OFFICE REPORTED NO COMMENT       OTHER, AS SPECIFIED:  
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED      The Governor's Office does not wish to review State Plan Amendments  
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL:  
  
13. TYPED NAME: **Toby Douglas**  
14. TITLE: **Director**  
15. DATE SUBMITTED: **10/4/11**

16. RETURN TO:  
**Department of Health Care Services  
Attn: State Plan Coordinator  
1501 Capitol Avenue, Suite 71.4001  
P.O. Box 997417  
Sacramento, CA 95899-7417**

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED:      18. DATE APPROVED: **OCT 27 2011**

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: **JUL - 1 2008**  
20. SIGNATURE OF REGIONAL OFFICIAL: 

21. TYPED NAME:   
22. TITLE: **Deputy Director, CMCS**

23. REMARKS:  
*Per 9 ink change made to boxes 6 & 7 by Regional Office with State concurrence*

2. A skilled nursing facility that is a distinct part of a general acute care hospital as defined in Section 72041 of Title 22 of the California Code of Regulations.
3. A subacute care program, as described in Section 14132.25 or subacute care unit, as described in Sections 51215.5 and 51215.8 of Title 22 of the California Code of Regulations.

K. Unless otherwise specified in this Section K, the facility types listed below will be reimbursed at the prospective rate for services provided in the particular rate year. The tables below reflect rate reductions at specified percentages (or rates that remain unchanged) with respect to the prospective rate applicable for the particular time period. "Prospective rate" means the prospective rate established for a given rate year in accordance with this Part IV (and other provisions of this Attachment, as applicable). Reductions specified below will only be applied for the dates listed.

1. Nursing Facilities – Level A (NF-A)

<b>Nursing Facilities Level A</b>		
Period	Reduction	With Respect to:
07/01/08 - 07/31/08	10%	Prospective rate for 2007/08
08/01/08 - 02/28/09	10%	Prospective rate for 2008/09
03/01/09 - Present	5%	Prospective rate for 2008/09

2. Skilled Nursing Facilities that are Distinct parts of General Acute Care Hospitals – Level B (DP/NF-B)

<b>Distinct Part Nursing Facilities Level B</b>		
Period	Reduction	With Respect to:
07/01/08 - 07/31/08	10%	Prospective rate for 2007/08
08/01/08 - 02/28/09	10%	Prospective rate for 2008/09
03/01/09 - 04/05/09	5%	Prospective rate for 2008/09
08/01/09 - 02/23/10	Set at Prospective rate for 2008/09	
03/01/11 - Present	5%	Prospective rate for 2008/09

3. Subacute Care Units that are, or are parts of, Distinct Parts of General Acute Care Hospitals (DP/NF Subacute)

<b>Distinct Part Adult Subacute</b>		
<b>Period</b>	<b>Reduction</b>	<b>With Respect to:</b>
07/01/08 - 07/31/08	10%	Prospective rate for 2007/08
08/01/08 - 02/28/09	10%	Prospective rate for 2008/09
03/01/09 - 04/05/09	5%	Prospective rate for 2008/09
08/01/09 - 02/23/10	Set at Prospective rate for 2008/09	

TN. No. 08-009D  
Supersedes  
TN. No. N/A

**OCT 27 2011**

Approval Date \_\_\_\_\_ Effective Date July 1, 2008

4. Freestanding Pediatric Subacute Care Unit

<b>Freestanding Pediatric Subacute</b>		
Period	Reduction	With Respect to:
08/01/09 - Present	Set at Prospective rate for 2008/09	

5. Pediatric Subacute Care Units that are, or are parts of, Distinct Parts of General Acute Hospitals (DP/NF Pediatric Subacute)

<b>Distinct Part Pediatric Subacute</b>		
Period	Reduction	With Respect to:
07/01/08 - 07/31/08	10%	Prospective rate for 2007/08
08/01/08 - 02/28/09	10%	Prospective rate for 2008/09
03/01/09 - 04/05/09	5%	Prospective rate for 2008/09
08/01/09 - 02/23/10	Set at Prospective rate for 2008/09	

6. Intermediate Care Facilities for the Developmentally Disabled (ICF/DD)

<b>ICF/DD</b>		
Period	Reduction	With Respect to:
08/01/09 - Present	Set at Prospective rate for 2008/09	

7. Intermediate Care Facilities for the Developmentally Disabled – Habilitative (ICF/DD-H)

<b>ICF/DD - H</b>		
Period	Reduction	With Respect to:
08/01/09 - Present	Set at Prospective rate for 2008/09	

8. Intermediate Care Facilities for the Developmentally Disabled – Nursing (ICF/DD-N)

ICF/DD - N		
Period	Reduction	With Respect to:
08/01/09 - Present	Set at Prospective rate for 2008/09	

9. Rural Swing Bed

Rural Swing Bed		
Period	Reduction	With Respect to:
07/01/08 - 07/31/08	10%	Prospective rate for 2007/08
08/01/08 - 10/31/08	10%	Prospective rate for 2008/09
08/01/09 - 02/23/10	Set at Prospective rate for 2008/09	
03/01/11 - Present	Set at Prospective rate for 2008/09	

- L. The payment reductions in boxes (1) through (9) will be monitored in accordance with the monitoring plan at Attachment 4.19-F, entitled "Monitoring Access to Medi-Cal Covered Healthcare Services".



V. DETERMINATION OF RATES FOR NEW OR REVISED PROGRAMS

- A. When State adopts a new service or significantly revises an existing service, the rate of reimbursement shall be based upon comparable and appropriate cost information which is available. Comparable rate and cost data shall be selected and combined in such a manner that the rate is reasonably expected to approximate median audited facility costs, had accurate cost reports been available for the particular class of facility. Such factors as mandated staffing levels and salary levels in comparable facilities shall be taken into account. This method of rate-setting shall ordinarily be relied upon to set rates only until such time as accurate cost reports which are representative of ongoing operations become available.
- B. When it is determined that cost report data from a class of facilities is not reliable for rate-setting purposes due to inaccuracies or reporting errors, a random sample of such facilities shall be selected for audit and the resulting audited costs shall be used for the rate study. After five years from the end of the fiscal year in which a facility begins participating in a program for Medi-Cal reimbursement, the reimbursement rate methodology will either revert to the provisions described in Section I through IV of Attachment 4.19 – D or be subject to new provisions as described in a State Plan Amendment.