

material to be presented must be submitted to each office on or before the date of the open meeting.

FDA and LSRO/FASEB are also inviting submission of written presentations of scientific data, information, and views. These materials should be submitted on or before May 31, 1996. Two copies of the written materials must be submitted to both offices.

Under its contract with FDA, FASEB will provide the agency with a scientific report on or about March 31, 1997.

Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Research Council, "Recommended Dietary Allowances," 10th ed., Washington, DC, National Academy Press, 1989.

Dated: February 27, 1996.

William K. Hubbard,
*Associate Commissioner for Policy
Coordination.*

[FR Doc. 96-5117 Filed 3-4-96; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Pennsylvania State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 10, 1996; 10:00 a.m. in Room 5020; 3535 Market Street, Philadelphia, Pennsylvania to reconsider our decision to disapprove Pennsylvania SPA 94-17.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Stan Katz, Presiding Officer, HCFA, C1-04-27, 7500 Security Boulevard, Baltimore, Maryland 21224-1850, Telephone: (410) 786-2661.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Pennsylvania State plan amendment (SPA) number 94-17.

Section 1116 of the Social Security Act (the Act) and 42 CFR, Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a

State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

Pennsylvania submitted SPA 94-17 for approval on December 29, 1995. The issues involved in this reconsideration are as follows: (1) The revised supplement submitted with SPA 94-17 provides for DSH payments to county nursing facilities prior to the proposed effective date of the plan amendment in violation of federal law at 42 CFR 447.256(c); (2) federal appropriations law, as interpreted by HCFA prohibit the "retroactive payment adjustments" which would be authorized under SPA 94-17; (3) the Department failed to publish adequate public notice in advance of the alleged change in its payment methods in accordance with the requirements at 42 CFR 447.205(c); and (4) the Department did not submit adequate information in support of its Medicare upper limit assurance at 42 CFR 447.272 and 447.253(b)(2).

In this plan amendment, the State of Pennsylvania revises significantly the State's nursing facility payment plan methodology to provide the formula for calculating a "disproportionate share" payment to county nursing facilities for State fiscal years (SFYs) 1993, 1994, and 1995.

These "disproportionate share" payments to county nursing facilities began in SFY 1991 and were continued in SFY 1992 under an approved State plan amendment. The State has revised significantly its nursing facility payment methodology three times since then (SFYs 1993, 1994 and 1995), but did not amend the State plan concerning these payments before the payments were made. Since Pennsylvania sought approval of a payment adjustment that was earlier than permissible under long-standing regulatory provisions

governing effective dates for plan amendments, HCFA disapproved the amendment.

Issue Regarding Effective Date of Payment Adjustments

Federal regulations at 42 CFR 447.256 specify that an approved state plan amendment becomes effective not earlier than the first day of the calendar quarter in which an approvable amendment is submitted. This amendment was submitted on December 29, 1994. Consequently, the *earliest* date for which Federal financial participation would be available for "disproportionate share" payments made under this amendment, if approved, was October 1, 1994. Even though this is the proposed effective date for SPA 94-17 requested by the State, this amendment could not be approved, as it would provide for retroactive "disproportionate share" payments for periods prior to the proposed effective date.

Pennsylvania's retroactive payment adjustments are also prohibited by the Department's appropriations law. The appropriations law provides that Medicaid payments may be made for any quarter with respect to state plan amendments which are in effect in that quarter, and which were submitted in, or prior to, that quarter and approved in that, or any later quarter. HCFA has interpreted this to mean that there can be no retroactive payments for any plan amendment which could result in an increase in Medicaid payments. If approved, this amendment would have increased Medicaid payments in quarters prior to the quarter in which the amendment was submitted; therefore, HCFA had no choice but to disapprove this SPA.

Issue Regarding Public Notice

Federal regulations provide that public notice of any significant proposed change in methods or standards for setting payment rates must be published before the proposed effective date of the change. Pennsylvania requested an effective date of October 1, 1994. However, the notice published on July 31, 1993, and relied on by the State to support the revised "disproportionate share" payments for SFY 1995, was defective. Even though the July 31, 1993, notice appears to be adequate for the SFY 1994 revised payment methodology, it is not sufficient for the SFY 1995 payment methodology because it did not contain an estimate of the expected increases in annual expenditures for SFY 1995, as required by Federal rules. Pennsylvania did not submit a plan amendment for

SFY 1995 payments in accordance with the effective date rules of 42 CFR 447.256(c). Therefore, the State's retroactive payment adjustments are not eligible for Federal financial participation.

While the State did publish notice of the SFY 1993 and 1994 adjustments, the State had indicated that public notice is not required because this amendment did not represent a significant change in the methods and standards for setting payment rates. HCFA disagreed. Since the State's currently approved plan provides for a nursing facility payment methodology for "disproportionate share" payments for SFYs 1991 and 1992 only, the State does not have methods or standards to presently authorize making such payments. Accordingly, the submission of this amendment, that established a new methodology in that a different percentage of medical assistance cost is used to determine the "disproportionate share" payments to county nursing facilities for SFYs 1993, 1994, and 1995, is a significant change for setting payment rates that must comply with the public notice requirements of 42 CFR 447.205(c).

Issue Regarding the Upper Limit

The State has not provided sufficient documentation in support of its assurance that the Medicare upper limit will not be exceeded because it did not incorporate the "disproportionate share" payments in the upper limit calculation. Pennsylvania was correct in stating that Federal law does not prohibit these payments; however, the State must establish that its payment rates, including these additional payments, meet the requirements of 42 CFR 447.253(b)(2) and 447.272. These two references state that aggregate Medicaid payments, to nursing facilities, will not exceed the amount that can reasonably be estimated to have been paid for those services under the Medicare payment principles.

Issue Regarding "Deemed Approval"

The State contends TN 94-17 was deemed approved by operation of law because it did not receive HCFA's request for additional information within 90 days of HCFA's receipt of the State's amendment. The applicable regulations at 42 CFR 447.256(b) state that if HCFA does not send notice to the State of its determination as to whether the assurances regarding a State plan amendment are acceptable within 90 days of the date HCFA receives the amendment, the assurances and the amendment will be deemed approved. In this case, the assurances and related

rate information were received by HCFA on January 3, 1995, making the 90th day April 3, 1995. As HCFA requested additional information regarding the proposed amendment by letter dated March 31, 1995, the 90-day requirement was met. The State's response, dated August 23, 1995, indicated that HCFA's request for additional information was postmarked April 5, 1995, and received on April 7, 1995. By letter dated September 19, 1995, the Philadelphia Regional Office notified the State that the 90-day requirement does not require that the State receive HCFA's response within 90 days. Because the Regional Office sent the response on March 31, 1995, it informed the State that the 90-day requirement had been met and that the amendment was not deemed approved.

The deficiencies described above allowed HCFA no choice but to recommend disapproval of Pennsylvania 94-17.

The notice to Pennsylvania announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Feather O. Houstoun,
Secretary, Department of Public Welfare,
Health and Welfare Building, P.O. Box
2675, Harrisburg, Pennsylvania 17120

Dear Ms. Houstoun: I am responding to your request for reconsideration of the decision to disapprove Pennsylvania State Plan Amendment (SPA) 94-17.

Pennsylvania submitted SPA 94-17 for approval on December 29, 1994. The issues involved in this reconsideration are as follows: (1) the revised supplement submitted with SPA 94-17 provides for DSH payments to county nursing facilities prior to the proposed effective date of the plan amendment in violation of federal law at 42 CFR 447.256(c); (2) Federal appropriations law, as interpreted by HCFA prohibit the "retroactive payment adjustments" which would be authorized under SPA 94-17; (3) the State failed to publish adequate public notice in advance of the alleged change in its payment methods in accordance with the requirements at 42 CFR 447.205(c); and (4) the State did not submit adequate information in support of its Medicare upper limit assurance at 42 CFR 447.272 and 447.253(b)(2).

I am scheduling a hearing on your request for reconsideration to be held on April 10, 1996, on the Fifth Floor; Room 5020; 3535 Market Street; Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please

notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786-2661.

Sincerely,

Bruce C. Vladeck,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18) (Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: February 23, 1996.

Bruce C. Vladeck,
Administrator, Health Care Financing
Administration.

[FR Doc. 96-5001 Filed 3-4-96; 8:45 am]

BILLING CODE 4120-01-P

Health Resources and Services Administration

Rural Health Research Centers; Availability of Funds

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy (ORHP), Health Resources and Services Administration, announces that applications are being accepted for cooperative agreements to support Rural Health Research Centers. This program is authorized by Section 301, Title III, of the Public Health Service Act. These centers will conduct policy relevant research on rural health services issues of multi-state and national significance, and disseminate the findings of their research.

This program announcement for the above stated program is subject to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, awards can be made in a timely fashion consistent with the needs of the program. At this time, given a continuing resolution and the absence of FY 1996 appropriations for this program, the award of cooperative agreements cannot be assured and the amount of funds available cannot be estimated. Should funds become available, awards will be made to up to five Rural Health Research Centers for up to \$480,000 per center per year in total costs (direct plus indirect). The project period for these cooperative agreements is not to exceed 4 years, subject to the availability of funds. Should funds become available, notification of the total funding amount