



APR 18 2012

Administrator
Washington, DC 20201

Mr. Jason A. Helgerson
State Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs
New York State Department of Health
Empire State Plaza
Coming Tower, Room 1466
Albany, NY 12237

Dear Mr. Helgerson:

I am responding to your request for approval of New York's Medicaid State plan amendment (SPA) NY 11-048, received by the Centers for Medicare & Medicaid Services (CMS) on January 19, 2012. In this amendment, New York proposed to limit payments for holding a nursing facility bed for temporarily hospitalized Medicaid beneficiaries to facilities in which at least fifty percent of the residents eligible for a Medicare managed care plan are enrolled in one. For the reason set forth below, I am unable to approve SPA NY 11-048 as submitted, because it does not comply with the requirements of sections 1902(a)(10)(B) of the Social Security Act (the Act).

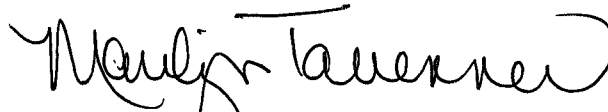
On September 13, 2011, CMS requested additional information about the proposed amendment. We indicated that the proposed criteria for determining Medicaid payment for reserved beds were not approvable because they would result in similarly situated individuals receiving different benefits based only on the actions of other residents in the nursing facility. We inquired as to possibilities for alternative criteria. You responded on January 19, 2012, that alternatives are not possible because the proposed criteria were enacted into New York State law on March 11, 2011. Having determined that there are no further options to explore with New York, we are moving to disapprove the SPA at this time. CMS stands ready to review and potentially approve a SPA request that is inclusive of all Medicaid beneficiaries for the purpose of reserving bed days in a nursing facility.

Section 1902(a)(10)(B) of the Act requires that the amount, duration, and scope of medical assistance be the same for all categorically needy Medicaid beneficiaries and all Medicaid beneficiaries within a medically needy group (Medicaid's "comparability" mandate). Proposed SPA 11-048 would not be consistent with this requirement because beneficiaries residing in some nursing facilities would not receive the benefit of bed hold available to beneficiaries in other nursing facilities. Whether an individual received the benefit of reserved beds would not depend on the individual's medical need or the qualifications of the facility to provide the benefit. Instead, the criteria would be based on the actions of other residents in the nursing facility. The result is that similarly situated categorically needy individuals (and similarly situated individuals in the same medically needy group) would not receive the same amount, duration, and scope of benefits.

Because the SPA is in conflict with Medicaid's comparability mandate and cannot be modified, and after consulting with the Secretary as required by Federal regulations at 42 CFR 430.15(c), I am unable to approve this SPA. If you are dissatisfied with this determination, you may petition for reconsideration within 60 days of receipt of this letter in accordance with the procedures set forth at 42 CFR 430.18. Your request for reconsideration may be sent to Ms. Cynthia Hentz, Centers for Medicare & Medicaid Services, Center for Medicaid and CHIP Services, 7500 Security Boulevard, Mail Stop S2-01-01, Baltimore, MD 21244-1850.

If you have any questions or wish to discuss this determination further, please contact Michael Melendez, Associate Regional Administrator, Division of Medicaid and Children's Health Operations, Centers for Medicare & Medicaid Services, 26 Federal Plaza, Room 37-100 North, New York, NY 10278-0063.

Sincerely,

A handwritten signature in black ink, appearing to read "Marilyn Tavenner". The signature is written in a cursive style with a large, sweeping initial "M".

Marilyn Tavenner
Acting Administrator