

Drive, Suite L, Baltimore, Maryland 21244-2670, Telephone: (410) 786-2055.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider the decision to disapprove Michigan SPA 02-021, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on December 23, 2002. This SPA was disapproved on February 14, 2003. In this amendment, Michigan proposes to allow the imposition of prior authorization requirements in the Medicaid program on prescription drugs when the manufacturer of the drug does not offer rebates to two State-funded, non-Medicaid programs. The State-funded programs are the Children's Special Health Care Services program (CSHCS) and the State Medical program (SMP).

At issue is whether CMS properly concluded as a basis for disapproving the amendment that: (1) The State had not demonstrated that its proposed prior authorization program would be consistent with simplicity of administration and the best interests of Medicaid recipients, as required by section 1902(a)(19) of the Social Security Act (the Act); and (2) the State had not demonstrated that its proposed prior authorization program would be consistent with efficiency, economy, or quality of care, as required by section 1902 (a)(30)(A) of the Act. In addition, Michigan contends that CMS does not have the authority to review the State's implementation of prior authorization requirements in the Medicaid program, other than for consistency with section 1927(d)(5) of the Act.

As indicated in a letter to state Medicaid directors dated September 18, 2002, CMS stated that it would review proposed state plan amendments seeking to secure prescription drug benefits, rebates, or discounts for non-Medicaid populations for consistency with the goals and objectives of the Medicaid program. After review, CMS did not find the evidence presented by the State in support of this SPA demonstrated that its prior authorization program furthered Medicaid goals and objectives. The CMS concluded that Michigan failed to show that a significant proportion of beneficiaries in either the CSHCS or SMP programs would meet the requirements needed to become eligible for Medicaid if their pharmacy benefit was terminated. In light of the burden that prior authorization may impose on Medicaid beneficiaries and the absence of documented benefit to current or potential Medicaid eligibles, CMS

determined that the State had failed to document that such prior authorization procedures would further the goals and objectives of the Medicaid program and thus be consistent with sections 1902(a)(19) and 1902(a)(30) of the Act.

Therefore, based on the reasoning above, and after consultation with the Secretary as required under 42 CFR 430.15 (c)(2), CMS disapproved Michigan SPA 02-021.

Section 1116 of the Act and 42 CFR part 430 establish Departmental procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The CMS 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.

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

Janet Olszewski,  
Director, Michigan Department of  
Community Health,  
Lewis Cass Building,  
320 South Walnut Street—Sixth Floor  
Lansing, Michigan 48913  
Dear Ms. Olszewski:

I am responding to your request for reconsideration of the decision to disapprove Michigan State Plan Amendment (SPA) 02-021, which was submitted on December 23, 2002. This SPA was disapproved on February 14, 2003. In this amendment, Michigan proposes to allow the imposition of prior authorization requirements in the Medicaid program on prescription drugs when the manufacturer of the drug does not offer rebates to two State-funded, non-Medicaid programs. The State-funded programs are the Children's Special Health Care Services program (CSHCS) and the State Medical program (SMP).

At issue is whether the Centers for Medicare & Medicaid Services (CMS) properly concluded as a basis for disapproving the amendment that: (1) The

State had not demonstrated that its proposed prior authorization program would be consistent with simplicity of administration and the best interests of Medicaid recipients, as required by section 1902(a)(19) of the Social Security Act (the Act); and (2) the State had not demonstrated that its proposed prior authorization program would be consistent with efficiency, economy, or quality of care, as required by section 1902 (a)(30)(A). In addition, Michigan contends that CMS does not have the authority to review the State's implementation of prior authorization requirements in the Medicaid program, other than for consistency with section 1927(d)(5) of the Act.

As indicated in a letter to state Medicaid directors dated September 18, 2002, CMS stated that it would review proposed state plan amendments seeking to secure prescription drug benefits, rebates, or discounts for non-Medicaid populations for consistency with the goals and objectives of the Medicaid program. After review, CMS did not find that the evidence presented by the State in support of this SPA demonstrated that its prior authorization program furthered Medicaid goals and objectives. The CMS concluded that Michigan failed to show that a significant proportion of beneficiaries in either the CSHCS or SMP programs would meet the requirements needed to become eligible for Medicaid if their pharmacy benefit was terminated. In light of the burden that prior authorization may impose on Medicaid beneficiaries and the absence of documented benefit to current or potential Medicaid eligibles, CMS determined that the State had failed to document that such prior authorization procedures would further the goals and objectives of the Medicaid program and thus be consistent with sections 1902(a)(19) and 1902(a)(30) of the Act. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Michigan SPA 02-021.

I am scheduling a hearing on your request for reconsideration to be held on July 10, 2003, at 10 a.m., Centers for Medicare & Medicaid Services, Chicago Regional Office, 233 Michigan Avenue; Suite R5-5 NW Minnesota; Chicago, Illinois 60601.

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 Ms. Kathleen Scully-Hayes 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) 786-2055.

Sincerely,  
Thomas A. Scully.

(Sect. 1116 of the Social Security Act (42 U.S.C. section 1316); (42 CFR 430.18))