

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: May 12, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

#### **Notice of Hearing: Reconsideration of Disapproval of Arkansas (SPA) 02-17 State Plan Amendment**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing on June 25, 2003, at 10 a.m., at the Centers for Medicare & Medicaid Services (CMS), Dallas Regional Office, 1301 Young Street, Room 1119; Dallas, Texas 75202.

**Closing Date:** Requests to participate in the hearing as a party must be received by the presiding officer by June 5, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Scully-Hayes, Presiding Officer CMS, 2520 Lord Baltimore 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 Arkansas State Plan Amendment (SPA) 02-17, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on July 29, 2002. This amendment proposes to provide supplemental payments to physicians and other allied health professionals who provide services through Faculty Group Practices associated with the University of Arkansas School of Medicine. The supplemental payment would be equal to the difference between the existing fee schedule rates and Faculty Group Practices' charges. CMS issued its initial determination disapproving Arkansas SPA 02-17 on March 6, 2003.

Arkansas timely requested reconsideration by letter dated April 14, 2003. At issue is whether the State has demonstrated that this SPA is consistent with the requirements of section 1902(a)(30)(A) of the Social Security Act (the Act). The CMS concluded that the information provided with this SPA was

insufficient to document consistency with economy, efficiency, and quality of care. Arkansas indicated that no other major payers in the State pay these Faculty Group Practices at these levels; indeed, Arkansas indicated that the five largest private third-party payers pay less than half of these levels. Arkansas provided no documentation to show that the Faculty Group Practices have higher costs than other providers of the same type in the State. In the light of evidence, CMS found that the State had not established that it was consistent with economy or efficiency for Medicaid to pay twice the rate paid by other third-party insurers for the same services. Moreover, the annualized payment methodology proposed by the State is not a customary method for paying physicians and other allied health professionals. The methodology would make it difficult to track payments for specific services and would complicate auditing processes. In the initial decision, CMS also cited the complicated nature of this payment scheme and difficulty in tracking and auditing payments for services as a reason why the proposed payment methodology was not consistent with section 1902(a)(30)(A) of the Act.

Section 1116 of 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 Centers for Medicare & Medicaid Services (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 Arkansas announcing an administrative hearing to reconsider the disapproval of the SPA reads as follows:

Mr. Kurt Knickrehm, Director  
Arkansas Department of Human Services  
Donaghey Plaza South  
PO Box 1437, Slot S401

Little Rock, Arkansas 72203-1437

Dear Mr. Knickrehm:

I am responding to your request for reconsideration of the decision to disapprove Arkansas State Plan Amendment (SPA) 02-17, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on July 29, 2002. This amendment proposes to provide supplemental payments to physicians and other allied health professionals who provide services through Faculty Group Practices associated with the University of Arkansas School of Medicine. The supplemental payment would be equal to the difference between the existing fee schedule rates and Faculty Group Practices' charges. The CMS issued its initial determination disapproving Arkansas SPA 02-17 on March 6, 2003. Arkansas timely requested reconsideration by letter dated April 14, 2003.

At issue is whether the State has demonstrated that this SPA is consistent with the requirements of section 1902(a)(30)(A) of the Social Security Act. The CMS concluded that the information provided with this SPA was insufficient to document consistency with economy, efficiency and quality of care. Arkansas indicated that no other major payers in the State pay these Faculty Group Practices at these levels; indeed, Arkansas indicated that the five largest private third-party payers pay less than half of these levels. Arkansas provided no documentation to show that the Faculty Group Practices have higher costs than other providers of the same type in the State. In the light of evidence, CMS found that the State had not established that it was consistent with economy or efficiency for Medicaid to pay twice the rate paid by other third-party insurers for the same services. Moreover, the annualized payment methodology proposed by the State is not a customary method for paying physicians and other allied health professionals. The methodology would make it difficult to track payments for specific services and would complicate auditing processes. In the initial decision, CMS also cited the complicated nature of this payment scheme and difficulty in tracking and auditing payments for services as a reason why the proposed payment methodology was not consistent with section 1902(a)(30)(A).

This notice announces an administrative hearing on June 25, 2003, at 10 a.m., Centers for Medicare & Medicaid Services (CMS), Dallas Regional Office, 1301 Young Street, Room 1119; Dallas, Texas 75202.

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.