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[FR Doc. 02-32197 Filed 12-26-02; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### Notice of Hearing: Reconsideration of Disapproval of New Jersey State Plan Amendment 02-10

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

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing to be held on

February 4, 2003, 10 a.m., Centers for Medicare & Medicaid Services' New York Regional Office, 26 Federal Plaza, Room 38-110A; New York, New York 10278-0063, to reconsider our decision to disapprove New Jersey State Plan Amendment 02-10.

**CLOSING DATE:** Requests to participate in the hearing as a party must be received by the presiding officer by January 13, 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 New Jersey State Plan Amendment (SPA) 02-10. This SPA was disapproved on September 19, 2002. In this amendment, New Jersey proposes to establish a new target group for case management services for youth and young adults under the age of 21 who are in the care of the Juvenile Justice Commission as a result of a commitment order. The SPA further specifies that the target group is limited to youth and young adults who reside in their own homes, the homes of relatives, community-based residences or residential group centers, or other community-based living arrangements as a result of their original placement or conditional release from a public institution.

At issue is whether CMS properly concluded as a basis for disapproving the amendment that: (1) The State had not demonstrated that the proposed services were within the statutory definition of case management services found in section 1915(g)(2) of the Social Security Act (the Act); (2) the proposed services are available without charge to the user and thus payment under the amendment is not reasonable and necessary and would duplicate payment under other program authorities; and (3) the amendment would restrict beneficiary freedom of choice by limiting providers to employees of New Jersey's Juvenile Justice Commission.

Medicaid coverage of targeted case management is authorized by section 1915(g) of the Act, which defines case management as services that assist beneficiaries in gaining access to needed services and does not include the direct provision of those services. Because the services proposed as Medicaid targeted case management are segments of the State's juvenile justice program, CMS believes that they are integral components of the direct services and

administrative functions of that juvenile justice program. In this instance, Medicaid payment for portions of the juvenile justice program would duplicate payment under other programs that are the responsibility of the State Government.

During CMS conversation with the State, section 8435 of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647 was discussed. In this section, Congress clarified that the Secretary may not deny approval of either an SPA or a claim on the basis that the state is required to provide such services under state law, or is or was otherwise, paying for the services using non-Federal funds. However, section 8435 also expressly states that this was not to be construed to require the Secretary to make payment for case management services that are provided without charge to the users of such services. Approval of this amendment, therefore, would be contrary to this express statutory provision, since this SPA seeks payment from the Medicaid program for services that are available without charge to the users.

In addition, while states are free to set qualifications for providers, a state must comply with Medicaid law and regulations concerning freedom of choice at section 1902(a)(23) of the Act and the implementing regulation at 42 CFR 431.51. These provisions require that a state plan permit beneficiaries to obtain services from any qualified provider that undertakes to provide the services. Section 1915(g)(1) of the Act states, "The provision of case management services under this subsection shall not restrict the choice of the individual to receive medical assistance in violation of section 1902(a)(23)." The proposed SPA restricts beneficiary choice of case managers by imposing standards that are not reasonably related to the qualifications of providers, but instead limits available providers to employees of the Juvenile Justice Commission.

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 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. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS is disapproving New Jersey SPA 02-10.

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

Ms. Kathryn A. Plant  
Director, Division of Medical Assistance and Health Services, Department of Human Services, P.O. Box 712, Trenton, NJ 08625-0712.

Dear Ms. Plant: I am responding to your request for reconsideration of the decision to disapprove New Jersey State Plan Amendment (SPA) 02-10.

In the SPA, New Jersey proposes to establish a new target group for case management services for youth and young adults under the age of 21 who are in the care of the Juvenile Justice Commission as a result of a commitment order. The SPA further specifies that the target group is limited to youth and young adults who reside in their own homes, the homes of relatives, community-based residences or residential group centers, or other community-based living arrangements as a result of their original placement or conditional release from a public institution.

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 the proposed services were within the statutory definition of case management services found in section 1915(g)(2) of the Social Security Act (the Act); (2) the proposed services are available without charge to the user and thus payment under the amendment is not reasonable and necessary and would duplicate payment under other program authorities; and (3) the amendment would restrict beneficiary freedom of choice by limiting providers to employees of New Jersey's Juvenile Justice Commission.

Medicaid coverage of targeted case management is authorized by section 1915(g) of the Act, which defines case management services as services that assist beneficiaries in gaining access to needed services and does not include the direct provision of those services. Because the services proposed as Medicaid targeted case management are segments of the State's juvenile justice program, CMS believes they are integral components of the direct services and

administrative functions of that juvenile justice program. In this instance, Medicaid payment for portions of the juvenile justice program would duplicate payment under other programs that are the responsibility of the State Government.

During CMS' conversation with the State, section 8435 of the Technical and Miscellaneous Revenue Act of 1988, Public Law Number 100-647 was discussed. In this section, Congress clarified that the Secretary may not deny approval of either an SPA or a claim on the basis that the state is required to provide such services under state law, or is or was otherwise, paying for the services using non-Federal funds. However, section 8435 also expressly states that this was not to be construed to require the Secretary to make payment for case management services that are provided without charge to the users of such services. Approval of this amendment, therefore, would be contrary to this express statutory provision, since this SPA seeks payment from the Medicaid program for services that are available without charge to the users.

In addition, while states are free to set qualifications for providers, a state must comply with Medicaid law and regulations concerning freedom of choice at section 1902(a)(23) of the Act and the implementing regulation at 42 CFR 431.51. These provisions require that a state plan permit beneficiaries to obtain services from any qualified provider that undertakes to provide the services. Section 1915(g)(1) of the Act states, "The provision of case management services under this subsection shall not restrict the choice of the individual to receive medical assistance in violation of section 1902(a)(23)." The proposed SPA restricts beneficiary choice of case managers by imposing standards that are not reasonably related to the qualifications of providers, but instead limits available providers to employees of the Juvenile Justice Commission.

This notice announces an administrative hearing to be held on February 4, 2003, at 10 a.m., Centers for Medicare & Medicaid Services, New York Regional Office, 26 Federal Plaza, Room 38-110A; New York, New York 10278-0063.

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

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: December 19, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02-32654 Filed 12-26-02; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers For Medicare & Medicaid Services

[CMS-4055-N]

#### Medicare Program: National Medicare+Choice Risk Adjustment Public Meeting—February 3, 2003

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Health and Human Services.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a national Medicare+Choice risk adjustment public meeting for Medicare+Choice organizations, Medicare capitated demonstration projects, PACE plans, Evercare plans, Social Health Maintenance Organizations, Wisconsin Partnership program, Minnesota Senior Health Options, providers, practitioners, and other interested parties. The public meeting will provide updated information on the final CMS-HCC (Hierarchical Condition Category) risk adjustment model and risk adjustment data processing. This public meeting builds on information provided at the January 16, 2002 public meeting held at CMS, the draft model released on March 29, 2002, and the regional training sessions held in June 2002.

**DATES:** The public meeting is scheduled for February 3, 2003 from 9 a.m. until 5 p.m., e.s.t.

**ADDRESSES:** The public meeting will be held in the CMS Auditorium, 7500 Security Boulevard, Baltimore, Maryland, 21244-1850.

**FOR FURTHER INFORMATION CONTACT:** Bobbie Knickman at (410) 786-4161 or [bknickman@cms.hhs.gov](mailto:bknickman@cms.hhs.gov). To submit public comments no later than February 18, 2003, 5 p.m., e.s.t., e-mail Angela Porter at [aporter@cms.hhs.gov](mailto:aporter@cms.hhs.gov) or fax to (410) 786-1048.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105-33) expanded the Medicare+Choice (M+C) program for