

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
<i>Wells/Jagers</i>	<i>9-20-10</i>

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER  <i>00128</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR  <i>cc: Ms. Forbner, Deps, CMS file closed 10/1/10, letter attached.</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>10-20-10</i>  <input type="checkbox"/> FOIA DATE DUE _____  <input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, Maryland 21244-1850



Center for Medicaid, CHIP and Survey & Certification  
Disabled and Elderly Health Programs Group

SEP 17 2010

RECEIVED

SEP 20 2010

Ms. Emma Forkner  
Director  
South Carolina Department of Health and Human Services  
Post Office Box 8206  
Columbia, South Carolina 29202-8206

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

Dear Ms. Forkner:

We have reviewed South Carolina State Plan Amendment (SPA) 10-009 received in the Atlanta Regional Office on August 30, 2010. Under this SPA, the State proposes to increase the estimated acquisition cost for multiple source drugs and covered drugs other than the multiple-source drugs from average wholesale price (AWP) minus 10 percent to wholesale acquisition cost (WAC) plus 12.5 percent. The effective date for this SPA is October 1, 2010.

Before we can continue processing this SPA, we need clarifying information as indicated below. Therefore, we are formally requesting additional information pursuant to Section 1915(f) of the Social Security Act.

CMS 179

1. On the CMS 179 form under Block 5, the "type of the plan material" was not checked to indicate that South Carolina 10-009 is an "amendment." Please feel free to revise the CMS 179 or provide authorization that allows the Centers for Medicare & Medicaid Services (CMS) to enter "pen and ink" changes to this effect.
2. The federal statute/regulations citation related to this SPA was not entered on the CMS 179 under Block 6. Please complete the CMS 179 with the correct citation.
3. On the CMS 179 under Block 7 for the Federal budget impact, the State listed "estimated @ 72.43 percent for 2011." Please provide an explanation with brief calculations to show how you estimated the budget impact. Additionally, please explain why the Federal budget impact is the same for FFY 2011 and 2012.

**State Plan Amendment Page: Attachment 4.19-B Page 3b**

4. Under the South Carolina SPA 10-009, the State proposes to revise its estimated acquisition cost (EAC) from average wholesale price (AWP) minus 10 percent to wholesale acquisition cost plus 12.5 percent. Please provide the rationale and documentation for how the State determined the proposed reimbursement rate is consistent with efficiency, economy, and quality of care in accordance with long standing requirement of Federal regulations presently codified at 42 CFR 447.331 through 447.334.
5. While we appreciate the signed text copy of the public notice, please provide a copy of the published public notice as required by 42 CFR 447.205.
6. Please indicate whether the proposed changes under this SPA have an impact on beneficiary access to pharmacy services. If so, please describe.
7. Section 5006 of the Recovery Act provides protections for Indians in Medicaid and CHIP. Please provide evidence that the State solicited advice from the Indians, Indian health programs or Urban Indian Organizations prior to the State's submission of the Medicaid state plan amendment.

**State Plan Reimbursement Funding Questions**

***Important: These questions should be responded in relation to this proposed SPA.***

Section 1903(a)(1) of the Social Security Act provides that Federal financial participation is only available for expenditures made by states for services under the approved State Plan. To ensure that program dollars are used only to pay for Medicaid services, we are asking states to confirm to CMS that pharmacies retain 100 percent of the payments provided to them as indicated in attachment 4.19B. Specifically, please answer the following questions regarding the proposed amendment and current reimbursement made under the Medicaid plan for pharmacy providers:

8. Do pharmacy providers retain all of the state and Federal Medicaid payments (including dispensing fees, ingredient costs, benefit management costs, etc.) or are providers obligated to return any portion of the Medicaid payment to the state or local government entity, or any other intermediary organization or entity?
9. If pharmacy providers are obligated to return any portion of the payment, the state must provide a full description of the repayment methodology including: a complete list of pharmacy providers that return their payments; the amount or percentage of the payment; and the disposition and use of the funds once they are returned to the state (i.e. general revenue fund, medical services account, etc.).

Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in the lowering the amount, duration, scope, or quality of care and services available under the plan. Please

describe how the state share of the State's Medicaid pharmacy payment in attachment 4.19B is funded, including the payments made under the proposed amendment. Specifically:

10. Describe whether the state share is from appropriation from the legislature, through intergovernmental transfer agreements (IGT), certified public expenditures (CPE), provider taxes, or any other mechanism used by the state to provide the state share.

11. Please provide the estimate of total expenditures and state share amounts for the State's Medicaid pharmacy payment.

12. If any of the state share is being funded by IGTs or CPEs, please fully describe the matching arrangement. If CPEs are used, please describe how the state verifies that the expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b).

Section 1902(a)(30) of the Act requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for FFP to states for expenditures for services under an approved state plan. If you are providing, or propose to provide under this amendment, an enhanced or supplemental payment to pharmacy providers under section 4.19B of the plan, please provide the following information:

The total amount for each enhanced or supplemental payment provided to pharmacy providers and the precise service cost this payment is covering.

13. Indicate whether there are public pharmacy providers and if they are receiving payments in accordance with attachment 4.19B that in the aggregate exceed its reasonable costs of providing services. If the payment exceeds the reasonable costs of services (for pharmacy that would be a reasonable dispensing fee and ingredient cost) please indicate whether the state recoups the excess and returns the Federal share of the excess to CMS on the quarterly expenditure report.

This request for additional information is made pursuant to Section 1915(f) of the Social Security Act and will stop the 90-day period for CMS' review and approval of a SPA. Upon receipt of your additional information, a new 90-day period will begin. In accordance with our guidelines to all State Medicaid Directors, dated January 2, 2001, we request that you provide a formal response to this request for additional information no later than 90-days from the date of this letter. If you do not provide us with a formal response by that date, we will conclude that the State has not established that the proposed SPA is consistent with all statutory and regulatory requirements and will initiate disapproval action on the amendment.

Because this Amendment was submitted after January 2, 2001 and is effective on or after January 1, 2001, please be advised that we will defer Federal Financial Participation (FFP) for State payments made in accordance with this Amendment until it is approved. Upon approval, FFP will be available for the period beginning with the effective date through the date of actual approval.

We ask that you respond to this request for additional information via the Atlanta Regional Office SPA/Waiver mailbox at SPA\_Waivers\_Atlanta\_R04@cms.hhs.gov with a copy to me at [larry.reed@cms.hhs.gov](mailto:larry.reed@cms.hhs.gov), Bernadette Leeds of the Division of Pharmacy at [bernadette.leeds@cms.hhs.gov](mailto:bernadette.leeds@cms.hhs.gov) and Tandra Hodges of the Atlanta Regional Office at [tandra.hodges@cms.hhs.gov](mailto:tandra.hodges@cms.hhs.gov).

If you have any questions regarding this request, please contact Bernadette Leeds at (410) 786-9463.

Sincerely,

*Mary Watson*  
for

Larry Reed  
Director  
Division of Pharmacy

cc: Jackie Glaze, ARA, Atlanta Regional Office  
Tandra Hodges, Atlanta Regional Office  
Valeria Williams, South Carolina Department of Health and Human Services



*State of South Carolina*  
*Department of Health and Human Services*

*Log 0128*  
*Due Date 10/20/10*

Mark Sanford  
Governor

October 1, 2010

Bonnie Fortner  
Director

Ms. Jackie L. Glaze  
Associate Regional Administrator  
Center for Medicare and Medicaid Services  
Division of Medicaid & Children's Health  
Atlanta Regional Office  
61 Forsyth Street, SW - Suite 4T20  
Atlanta, Georgia 30303-8909

RE: South Carolina Title XIX State Plan Amendment SC 10-009 Request for Additional Information

Dear Ms. Glaze:

This is in response to the subject Request for Additional Information dated September 17, 2010 relating to SC 10-009.

**CMS Question #1 CMS 179 Form**

On the CMS 179 form under Block 5, the "type of the plan material" was not checked to indicate that South Carolina 10-009 is an "amendment." Please feel free to revise the CMS 179 or provide authorization that allows the Centers for Medicare & Medicaid Services (CMS) to enter "pen and ink" changes to this effect.

**SCDHHS Response:** Updated Form 179 attached

**CMS Question #2 CMS 179 Form**

The federal statute/regulations citation related to this SPA was not entered on the CMS 179 under Block 6. Please complete the CMS 179 with the correct citation.

**SCDHHS Response:** Updated Form 179 attached

**CMS Question #3 CMS 179 Form**

On the CMS 179 under Block 7 for the Federal budget impact, the State listed "estimated @ 72.43 percent for 2011." Please provide an explanation with brief calculations to show how you estimated the budget impact. Additionally, please explain why the Federal budget impact is the same for FFY 2011 and 2012.

**SCDHHS Response:**

SCDHHS assumed an annual FFS pharmacy expenditure of \$260,000,000. Historically, we see that about 80% of claims pay based on AWP, so 80% of \$260 million is \$208 million (the other 20% of claims pay without regard to the AWP, so we excluded them outright from our consideration).

Ms. Jackie L. Glaze  
October 1, 2010  
Page 2

Next we have to back out the dispensing fee, because that won't change in relation to the AWP/WAC. We assumed 4.5 million claims a year, but only about 31% of claims pay at AWP. This gives us an estimated \$5.6 million in dispensing fees, leaving us with a "drug cost" of \$202,350,250 for a year.

Now we have to get AWP and WAC in like terms. We can mathematically determine that:  $AWP_{postRB-10\%} = WAC + 8\%$  and  $AWP_{preRB-10\%} = WAC + 12.5\%$ .

We now use the equivalent of  $WAC + 8\%$  to pay claims. So, from this we can use the drug cost above, and divide it by 1.08 to get at the WAC cost of these drugs (e.g. the \$202,350,250 above represents \$187,361,343 worth of WAC).

Now, we simply multiply this WAC cost by the new WAC multiplier of  $WAC + 12.5\%$  (or  $WAC \times 1.125$ ), and this gives us drug cost of \$210,781,510. To that we have to add back the dispensing fee, so now we have \$216,431,260 worth of expenditure using the new payment method.

When we compare the current method (\$208,000,000) to the new (\$216,431,260), we get an estimate of \$8,431,260 worth of additional costs due to the proposed change (which was rounded to \$8,500,000).

In regards to the Federal Budget Impact, the FMAP rate of 72.43% used in the original submission was simply an estimate and now that we have obtained the ARRA FMAP rates through June 30, 2011, we can update the composite ARRA FMAP rate for FFY 2011 to reflect a rate of 75.19% ( $(79.58\% + 76.58\% + 74.58\% + 70.04\%) / 4$ ). The FFY 2012 FMAP increase of approximately \$6.4 million was an oversight and should be reduced to \$0. We will adjust the 179 estimate accordingly to reflect the changes.

**Question #4 - State Plan Amendment Page: Attachment 4.19-B Page 3b**

Under the South Carolina SPA 10-009, the State proposes to revise its estimated acquisition cost (EAC) from average wholesale price (AWP) minus 10 percent to wholesale acquisition cost plus 12.5 percent. Please provide the rationale and documentation for how the State determined the proposed reimbursement rate is consistent with efficiency, economy, and quality of care in accordance with long standing requirement of Federal regulations presently codified at 42 CFR 447.331 through 447.334.

**SCDHHS Response:** SC Medicaid submits this SPA in response to a proviso directive contained in the South Carolina 2010 – 2011 Appropriations Act. This action would maintain reimbursement to our pharmacies at the level prior to the redefinition of AW.

**Question #5 - State Plan Amendment Page: Attachment 4.19-B Page 3b**

While we appreciate the signed text copy of the public notice, please provide a copy of the published public notice as required by 42 CFR 447.205.

**SCDHHS Response:** A copy of the published public notice is attached.

**Question #6 - State Plan Amendment Page: Attachment 4.19-B Page 3b**

Please indicate whether the proposed changes under this SPA have an impact on beneficiary access to pharmacy services. If so, please describe.

**SCDHHS Response:** Access to beneficiaries would be enhanced since the rate of reimbursement to pharmacies would be increased.

Ms. Jackie L. Glaze  
October 1, 2010  
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**Question #7 - State Plan Amendment Page: Attachment 4.19-B Page 3b**

Section 5006 of the Recovery Act provides protections for Indians in Medicaid and CHIP. Please provide evidence that the State solicited advice from the Indians, Indian health programs or Urban Indian Organizations prior to the State's submission of the Medicaid state plan amendment.

**SCDHHS Response:** We believe the majority of covered Catawbas are families and children. A representative of the Catawbas sits on our Medical Care Advisory Committee. SPA's are reviewed prior to submission at these meetings and information documents are provided.

**State Plan Reimbursement Funding Questions**  
***Important: These questions should be responded in relation to this proposed SPA.***

Section 1903(a)(1) of the Social Security Act provides that Federal financial participation is only available for expenditures made by states for services under the approved State Plan. To ensure that program dollars are used only to pay for Medicaid services, we are asking states to confirm to CMS that pharmacies retain 100 percent of the payments provided to them as indicated in attachment 4.19B. Specifically, please answer the following questions regarding the proposed amendment and current reimbursement made under the Medicaid plan for pharmacy providers:

**Questions #8 - State Plan Reimbursement Funding Question**

Do pharmacy providers retain all of the state and Federal Medicaid payments (including dispensing fees, ingredient costs, benefit management costs, etc.) or are providers obligated to return any portion of the Medicaid payment to the state or local government entity, or any other intermediary organization or entity?

**SCDHHS Response:** Under SC 10-009, providers retain 100% of the pharmaceutical payments that will be reimbursed under this state plan amendment effective October 1, 2010.

**Questions #9 - State Plan Reimbursement Funding Question**

If pharmacy providers are obligated to return any portion of the payment, the state must provide a full description of the repayment methodology including: a complete list of pharmacy providers that return their payments; the amount or percentage of the payment; and the disposition and use of the funds once they are returned to the state (i.e. general revenue fund, medical services account, etc.).

**SCDHHS Response:** Not applicable

Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in the lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of the State's Medicaid pharmacy payment in attachment 4.19B is funded, including the payments made under the proposed amendment. Specifically:

**Questions #10 - State Plan Reimbursement Funding Question**

Describe whether the state share is from appropriation from the legislature, through intergovernmental transfer agreements (IGT), certified public expenditures (CPE), provider taxes, or any other mechanism used by the state to provide the state share.

**SCDHHS Response:**

Service/Payment Program	Source of Funding
Pharmaceuticals	State Appropriations to the Medicaid Agency. CPE from the SC Department of Mental Health (SCDMH), IGTs from the SC Department of Disabilities and Special Needs (SCDDSN), and CPE from the SC Department of Health and Environmental Control (SCDHEC) which are Actually State Appropriations

SCDMH and the SCDHEC use certified public expenditures (CPE) as the source of state matching funds. The following CPE contract language has been developed and is incorporated into SCDMH's contracts:

SCDMH agrees to incur expenditures from state appropriated funds and/or funds derived from tax revenue in an amount at least equal to the non-federal share of the allowable, reasonable and necessary cost for the provision of services to be provided to Medicaid recipients under this contract prior to submitting claims for payment under this contract. Documentation of the non-federal expenditures necessary to support the claims for reimbursement must be maintained by SCDMH and are subject to audit by SCDHHS. SCDHHS

**Questions #11 - State Plan Reimbursement Funding Question**

Please provide the estimate of total expenditures and state share amounts for the State's Medicaid pharmacy payment.

**SCDHHS Response:** A schedule detailing an estimate of total expenditures and state share amounts for each type of pharmaceutical expenditure is enclosed.

**Questions #12 - State Plan Reimbursement Funding Question**

If any of the state share is being funded by IGTs or CPEs, please fully describe the matching arrangement. If CPEs are used, please describe how the state verifies that the expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b).

**SCDHHS Response:** SCDDSN, via IGTs, transfer state appropriations for private pharmacies providing drugs to their Medicaid waiver population. SCDDSN is required to transfer the state matching funds in advance, prior to the private pharmacies submitting their claims for Medicaid reimbursement.

Section 1902(a)(30) of the Act requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for FFP to states for expenditures for services under an approved state plan. If you are providing, or propose to provide under this amendment, an enhanced or supplemental payment to pharmacy providers under section 4.19B of the plan, please provide the following information:

The total amount for each enhanced or supplemental payment provided to pharmacy providers and the precise service cost this payment is covering.

**Questions #13 - State Plan Reimbursement Funding Question**

Indicate whether there are public pharmacy providers and if they are receiving payments in accordance with attachment 4.19B that in the aggregate exceed its reasonable costs of providing services. If the payment exceeds the reasonable costs of services (for pharmacy that would be a reasonable dispensing fee and ingredient cost) please indicate whether the state recoups the excess and returns the Federal share of the excess to CMS on the quarterly expenditure report.

Ms. Jackie L. Glaze  
October 1, 2010  
Page 5

**SCDHHS Response:** It is anticipated that the payments received by governmental providers under this plan amendment will not exceed their reasonable costs of providing services.

If you should have any questions, please contact Melanie Giese, Bureau of Health Services at (803) 898-2868 or Valeria Williams at (803) 898-3477.

Sincerely,

A handwritten signature in cursive script, appearing to read "Emma Forkner".

Emma Forkner  
Director

EF/mgws

Enclosures

cc: Mr. Larry Reed, CMSO  
Ms. Bernadette Leeds, Division of Pharmacy  
Ms. Tandra Hodges, Atlanta Regional Office