

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR**

**ACTION REFERRAL**

TO	DATE
<i>Baaling</i>	<b>3-23-07</b>

<b>DIRECTOR'S USE ONLY</b>	<b>ACTION REQUESTED</b>
1. LOG NUMBER  000602	<input checked="" type="checkbox"/> Prepare reply for the Director's signature DATE DUE <b>3-30-07</b>
2. DATE SIGNED BY DIRECTOR  <i>Cc: Mr. Kerr, Singleton, Wells</i>	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____ <input type="checkbox"/> FOIA DATE DUE _____ <input type="checkbox"/> Necessary Action

APPROVALS <small>(Only when prepared for director's signature)</small>	APPROVE	* DISAPPROVE <small>(Note reason for disapproval and return to preparer.)</small>	COMMENT
1.	<i>Cleared 4/11/07, letter attached.</i>		
2.			
3.			
4.			

Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
61 Forsyth St., SW, Suite 4120  
Atlanta, Georgia 30303-8909

CENTERS for MEDICARE & MEDICAID SERVICES



March 23, 2007

*Doc. Boulton  
"Yobly's Sign"  
cc: Kerr  
Singer  
Jell*

**RECEIVED**

MAR 23 2007

Robert M. Kerr, Director  
South Carolina Department of Health and Human Services

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

P.O. Box 8306  
Columbia, SC 29202-8206

Dear Mr. Kerr:

This is in response to your letter dated March 15, 2007, requesting that the Centers for Medicare & Medicaid Services (CMS) approve Federal Financial Participation (FFP) for the first one-year option under contract 04-S6353-A10533 with First Health Services. The exercise of this contractual option will provide uninterrupted Pharmacy Benefit Manager (PBM) services to Medicaid beneficiaries in your state for an additional year beginning March 19, 2007.

Your request, dated March 15, 2007, did not provide CMS with sufficient processing time for prior approval of enhanced FFP (75/25) in the amount of \$4,352,490. CMS has 60 days under 42 CFR 95.621 to process Medicaid Management Information Systems (MMIS) planning documents. Due to the nature of your request, it is highly probable that we would have viewed it favorably; however, CMS retains the right to review and approve/disapprove any MMIS Advance Planning Document (APD) within 60 days. Specifically, under Title XIX payments to states for MMIS are considered "Grants" with specific requirements for justification, documentation and submission to CMS for approval prior to the State obligating FFP.

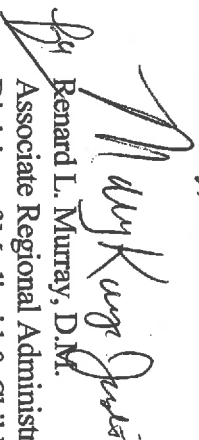
We have had discussions with South Carolina regarding compliance with prior approval conditions for MMIS FFP. On December 2, 2004, South Carolina was granted an exception to prior approval regulations for FFP under HCFA Action Transmittal No. AT-OSS P-00-01, dated March 13, 2000. The waiver was granted under the conditions that South Carolina submit for approval an all-encompassing MMIS APD. In addition, the AT specifically required that all states that were given a one-time waiver of the prior approval requirements must put in place a system which will ensure that breaches of our prior approval requirements do not occur in the future. The approval contained a specific warning that "this waiver is a 'one-time' waiver." That is, any future failures to adhere to our prior approval requirements will result in the project receiving no FFP from CMS." Your request to exercise the option year for the PBM contract does not document any emergent conditions which may have prohibited the timely submission of your request.

In response to concerns about the relationship between your office and CMS, we approved an unprecedented reconciliation action of your outstanding MMIS requests last fall. However, just a few months later, we appear to have come full circle. The South Carolina Department of

Health and Human Services MMIS is hereby placed under a Corrective Action Plan (CAP) for failing to adhere to the statutory and regulatory requirements to obtain CMS prior approval for FFP for MMIS APDs. Due to the frequency of the non-compliance with program requirements, and the explicit warning issued by CMS in a letter dated December 2, 2004, the requested funding for the first option year of the contract with First Health Services is disapproved. Effective immediately, all APDs from South Carolina will be held without action pending the receipt of a CAP. Based upon the systemic nature of the situation South Carolina will now receive additional review by CMS and will submit any and all contracts or APDs requiring FFP for MMIS, regardless of the dollar amount or intergovernmental nature, for prior approval by CMS. South Carolina is free to use any format for the CAP provided that it is an executable business response which addresses all aspects of this serious situation. South Carolina will submit this plan to the Atlanta Regional Office on or before May 28, 2007.

If there are any questions concerning this approval, please contact L. David Hinson at (404) 562-7411 or via E-mail at [Lawrence.hinson@cms.hhs.gov](mailto:Lawrence.hinson@cms.hhs.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Renard L. Murray, D.M.", is written over the typed name.

Renard L. Murray, D.M.  
Associate Regional Administrator  
Division of Medicaid & Children's Health  
Operations

**DEPARTMENT OF HEALTH & HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**  
Region IV Division of Medicaid & Elderly Affairs  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W., Suite 4T20-  
Atlanta, Georgia 30303-8909

**OFFICIAL BUSINESS**  
PENALTY FOR PRIVATE USE, \$300

Robert M. Kerr, Director  
South Carolina Department of Health and Human  
Services  
P.O. Box 8306  
Columbia, SC 29202-8206

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

MAR 23 2007

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This portion can be removed for Recipient's records.  
3/3/07 FedEx Tracking Number 852442963289

to/s DAVID HINSUN Phone 404 562-7403

from/jenny CMS

61 FOREYTH ST SW STE 4T20  
ATLANTA GA ZIP 30303-8701

**Internal Billing Reference**

to/s ROBERT KERR Phone 602 398-2506

from/jenny SO. DEPT OF HEALTH THURMAN SUZ

to/s MEDICINAL DIRECTOR

from/jenny 1201 MAIN ST  
COLUMBIA SC ZIP 29202



8524 4296 3289

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Recipient's Copy

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

Mark Sanford  
Governor

Robert M. Kerr  
Director

April 11, 2007

Mr. Renard Murray  
Associate Regional Administrator  
Division of Medicaid and Children's Health  
Center for Medicare and Medicaid Services  
61 Forsyth Street, SW, Suite 4T20  
Atlanta, Georgia 30303-8909

Dear Mr. Murray:

We are in receipt of your March 23, 2007 letter, disapproving the Department of Health and Human Services' (DHHS) request for approval of Federal Financial Participation (FFP) for the first one year option under contract 04-S6353-A 10533 with First Health. Your denial appears to be based on DHHS' failure to allow the Centers for Medicare and Medicaid Services (CMS) sufficient processing time for prior approval of enhanced FFP. However, you later state that the denial is due to the frequency of non-compliance with program requirements. We are aware that pursuant to 45 CFR 95.621 CMS has sixty (60) days to approve such a request. We submitted our request on March 15, 2007, which was four days prior to the effective date of the automatic extension. While the submission of the request did not allow a full 60 days, we were under the impression that this funding approval was merely a formality since the contract for these services were competitively procured and CMS had previously approved the Advanced Planning Document (APD) and the resulting contract. The contract approved by CMS clearly states that this was a 3-year contract with two option years.

However, we are resubmitting our request for funding approval, understanding that CMS may take the entire 60 days to approve. An outline of our funding request is attached. We do not anticipate any problems with approval as you have stated in your letter that it is "highly probable" that CMS would have "viewed it favorably." We

Log # 602

invite CMS to reconsider its decision disapproving our funding request. It is our understanding that CMS may at its discretion retroactively approve requests such as ours, thereby avoiding a break in the receipt of federal funding. However, if CMS elects not to reverse its decision, pending approval, DHHS will not claim any federal funds for this contract. All state dollars will be used to make payment to First Health.

Additionally, we are requesting to amend our contract with First Health to include a Dose Optimization program. It is our request that this amendment become effective July 1, 2007. The purpose of the program is to assess claims where there are multiple strengths of drugs and to assure that the most cost-effective strengths of drugs are dispensed while not altering the daily dose of the medications. The total cost for the Dose Optimization program during this option year is \$366,571. A copy of the amendment is attached for your review and approval. We realize that CMS has 60 days to approve this contract amendment.

Now, with that said, we must tell you that we are shocked at the tone of your letter. South Carolina has bent over backwards to be responsive to CMS and to comply with all federal statutes and regulations in administering the Medicaid program. You know first hand that South Carolina has worked diligently to comply with all approval conditions for FFP for our Medicaid Management Information System (MMIS). Since granting South Carolina an exception to the prior approval regulations on December 2, 2004, South Carolina has been working diligently with your staff to make sure we are in compliance with all prior approval regulations for all MMIS FFP. Since David Hinson has been assigned to South Carolina, communications and our relationship with your office have greatly improved. Our staff communicates with Mr. Hinson frequently to ensure that we are administering our MMIS contracts/procurements in accordance with federal guidelines. We have also received his guidance regarding Request for Proposals (RFP) and APD submissions and APD updates.

In your March 23, 2007, letter you mentioned that you approved an "unprecedented reconciliation action" of South Carolina's outstanding MMIS requests. What you failed to acknowledge is that South Carolina had been waiting on CMS' approval of our MMIS requests since November 15, 2005. (See letter attached). Specifically, in our letter of November 15, 2005, we informed you that we had expended considerable time and effort compiling and refining a large amount of historical costs, APDs, contracts, and procurement information to develop an "all-encompassing" APD at your request. This submission included our request for approval of numerous MMIS related contracts/procurements. However, we did not receive any written correspondence regarding our submission until March 13, 2006, some 128 days after our submission. As you are aware, pursuant to 45 CFR 95.611(d), Prompt Action on Request for Prior Approval, if CMS has not provided written approval, disapproval, or a request for information within 60 days of the date of the State's request, the request will

Mr. Renard Murray  
April 11, 2007  
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automatically be deemed to have provisionally met the prior approval conditions. It is partly because of CMS' delays in approval that the State finds itself in this position.

You mention that "we appear to have come full circle." Your reference appears to be in relation to our compliance with prior approval conditions. However, in reality the "full circle" is that you are again using this as an opportunity to challenge South Carolina about its MMIS platform. CMS does not want South Carolina to remain in the Clemson platform. Instead, CMS wants South Carolina to contract with a fiscal intermediary. Prior to your recent disapproval of our request, it was our belief that CMS and our agency were on the same page with regard to our MMIS platform. As we have told you on numerous occasions, and specifically in our letter of March 28, 2006, there is no evidence that our MMIS does not pay claims efficiently, timely, and accurately. We are of the opinion that as long as claims are paid in this manner, there is no need for the State to contract with a fiscal intermediary. This is especially true in light of the troubles the states in our region are experiencing with their procurement of fiscal intermediaries.

Finally, in your letter you ask for a Corrective Action Plan (CAP). While we are not clear on what would be included in such a plan, we will tell you that South Carolina will assign an attorney to specifically oversee all MMIS related procurements and APD submissions. Additionally, South Carolina is including a MITA Self Assessment Planning APD (PAPD) for your approval. Also, we are attaching our MMIS Strategic Plan which includes an explanation of Clemson's proposal to redesign our MMIS that will fully exploit the benefits of modern day object oriented design structures and programming technologies. Under separate cover we will forward you the MMIS Manpower Services Request for Proposals (RFP) and APD for your review and approval.

Again, we reiterate that it is imperative that South Carolina and CMS maintain open lines of communication. We would appreciate in the future the opportunity to discuss matters of this magnitude prior to receipt of such harsh correspondence, especially since South Carolina has worked so hard to comply with applicable federal rules and regulations regarding our MMIS related procurements. As you remember, we extended an invitation to you, along with any other CMS officials, to visit South Carolina, at our expense, to address any concerns CMS had regarding our MMIS. At that time you did not accept our offer. However, I am glad you have accepted our request to meet in May to discuss our strategic plan regarding our MMIS with the platform maintained by Clemson University. I anticipate this will be a very productive and informative meeting and we are looking forward to meeting with you.



Mr. Renard Murray  
April 11, 2007  
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If you have additional questions, do not hesitate to contact me at (803) 898-2647.

Sincerely,

A handwritten signature in cursive script that reads "Deirdra T. Singleton". The signature is written in dark ink and is positioned above the printed name.

Deirdra T. Singleton  
General Counsel

DTS/b

Enclosures