DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
Roberts/FOIA	3-31-14

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER 000337	[ ] Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR _____ CC: Cox Cleared 4/18/14, letter attached.	[ ] Prepare reply for appropriate signature DATE DUE _____ [X] FOIA DATE DUE 4-15-14 [ ] 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.			

Brenda James

From: Rick Hepfer
Sent: Monday, March 31, 2014 1:47 PM
To: Brenda James
Cc: Byron Roberts
Subject: FW: Genesis Health Care v SCDHHS

Hey, Brenda. Here's an FOIA request that came in by e-mail. It has to do with a case I'm handling. Can you log it back to the OGC?

Rick Hepfer
Attorney IV
Hepfer@scdhhs.gov
803.898.2791
www.scdhhs.gov

SOUTH CAROLINA Healthy Connections MEDICAID

From: Tony R. Megna [mailto:tmegna@gmail.com]
Sent: Sunday, March 30, 2014 6:39 PM
To: Rick Hepfer
Cc: Katie Noyes; Thomas Smith; John Milling; Susan Bridgers
Subject: Genesis Health Care **v** SCDHHS

Rick-

I would appreciate you providing the following as a request for production of documents. If the Department is unable or unwilling to do so, I request the documents be produced according to the requirements of the South Carolina Freedom of information Act.

As used below, the word document(s) is intended to be construed broadly and includes all documents and materials, including correspondence, emails, facsimiles, or any other types of communication (electronic or otherwise) in the possession and/or control of the Department and/or to which the Department has access.

1. All documents provided to CMS by the Department CMS regarding SPA SC-11-005.

2. All documents provided by or sent by CMS to the Department CMS regarding SPA SC-11-005.

3. All documents that interpret, provide commentary on, or otherwise comment in anyway whatsoever in the possession and or control of the Department by anyone whosoever on Act 77 of the 2010 legislature.

3. All correspondence to or from CMS regarding whether or not FQHCs and / or RHCs are subject to the TPL (third-party liability)

4. Any and all documents that explain the first sentence of the second paragraph on the first page of SPA SC-11-005 that states FQHCs and RHCs are exempted from the reductions associated with
the
SPA due to federal regulations. Please provide copies of the federal regulation documents to which the SPA refers.

5
. Please provide all documents that indicate that the SC state legislature allowed, condoned or otherwise granted permission for the Department to implement the TPL policy as to (third-party liability) as to FQHCs and/or RHCs.

6
. Please provide all documents form CMS, or elsewhere, that indicate
federal law
create
s
a legal obligation on a state to limit Medicaid PPS reimbursement for Medicare patients to Medicare deductibles and co-payments.

7
. Please provide all documents that indicate Act 77 of the 2010 legislature allows the Department to limit Medicaid PPS reimbursement for Medicare patients to Medicare deductibles and co-payments.

8.
Please provide all documents that indicate Act 77 of the 2010 legislature allows the Department to change the methodology for reimbursing the Medicaid PPS reimbursement to FQHCs and/or RHCs by limiting Medicaid PPS reimbursement for Medicare patients to Medicare deductibles and co-payments.

9
. Please provide all documents that indicate Act 77 of the 2010 legislature allows the Department to change the "manner in which supplemental payments are made" to RHCs and/or FQHCs by limiting Medicaid PPS reimbursement for Medicare patients to Medicare deductibles and co-payments.

10
. Please provide all documents that indicate Genesis Healthcare has agreed to a reduction in the Medicaid PPS reimbursement for any eligible Medicaid beneficiary for any reason.

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. Please provide all documents that indicate
the Department is not required to to reimburse Genesis Healthcare its' full Medicaid PPS reimbursement for
"
d
ual eligibles"
patients who qualify for Medicare and ***full*** benefits under Medicaid

Also, please let me know if you will produce the people I named in my last email (the two Department's spokespersons whose depositions we took and Mr. Keck) or whether I need to issue subpoenas.

I look forward to seeing you at the hearing on May 1.

Also, I have arranged for a stenographer to be present. Please let me know if you or the Hearing Officer have an objection. It should only assist all of us.

Thanks, Tony

SOUTH CAROLINA
Healthy Connections
MEDICAID

Nikki Haley GOVERNOR
Anthony Keck DIRECTOR
P.O. Box 8206 > Columbia, SC 29202
www.scdhhs.gov

TO:

FROM:

SUBJECT: Cost of Processing FOIA Request #

The South Carolina Department of Health and Human Services has received and processed your FOIA request. The cost for processing this information is as follows:

Staff processing time at $10.00 per hour	_____ Hours	$_____
Pages copied at $.10 per page	_____ Pages	$_____
Pages faxed at $.20 per page	_____ Pages	$_____
Shipping and Handling Costs		$_____
Other costs associated with the FOIA request: _____		$_____
Total Amount Due SCDHHS:		$_____

Please remit the above amount to the following address:

Bureau of Fiscal Affairs
South Carolina Department of Health and Human Services
Post Office Box 8297
Columbia, South Carolina 29202-8297

Please contact _____ should you have any questions.

_____ _____
Signature Date:

Log # 337

Healthy Connections MEDICAID

Nikki Haley
Anthony Keck
P.O. Box 8206 • Columbia, SC 29202
www.scdhhs.gov

April 18, 2014

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203

Re: Most Recent FOIA, via March 30, 2014 e-mail

Thank you for your FOIA request associated with your appeal of the Department's "Patient Responsibility" policy. Enclosed is the information you requested organized in accordance with the sequence of your request:

1. All documents provided to CMS by the Department to CMS regarding SPA SC-11-005.

The official SPA file is enclosed.

2. All documents provided by or sent by CMS to the Department CMS regarding SPA SC-11-005.

The official SPA file is enclosed.

3. All documents that interpret, provide commentary on, or otherwise comment in anyway whatsoever in the possession and or control of the Department by anyone whosoever on Act 77 of the 2010 legislature.

We cannot locate Act 77 of the 2010 S.C. Legislature. Act 77 of the 2011 legislative year does deal with Proviso 89.87 of the 2010 Legislative year and may be the correct reference. As we have explained in our Briefs, it appears to us that the Proviso 89.87 was not carried forward for the 2011-12 fiscal year, so the effect of the Joint Resolution (Act 77) also expired. Enclosed are Bulletins and other documents that were generated as a result of the expiration of Proviso 89.87 (and by implication Act 77), which allowed the agency to make reimbursement cuts for Medicaid beneficiaries. Note that in some of the documents FQHCs and other specific providers are specifically exempt from the cuts. Please let us know if we have misunderstood your request. We can, if you request, institute a wider search for documents, but the cost of running such a search through our IT Department generally is about $100.00, and we will need more time to run such a search. Let me know if you would like us to proceed.

4. All correspondence to or from CMS regarding whether or not FQHCs and / or RHCs are subject to the TPL (third-party liability).

We believe that this is likely to be the only specific such correspondence. Ms. Strait is the person in the agency most likely to have had such a conversation, and her entire e-mail chain is enclosed. We do not believe that anyone else communicated with CMS on the issue. However, we will again be happy to run a wider search, and again estimate the cost to be in the $100 range and take additional time.

5. Any and all documents that explain the first sentence of the second paragraph on the first page of SPA SC-11-005 that states FQHCs and RHCs are exempted from the reductions associated with the SPA due to federal regulations. Please provide copies of the federal regulation documents to which the SPA refers.

We cannot find any other explanatory documents than those sent with the SPA package and Bulletins, etc. that are enclosed related to 1, 2 & 3, above. Although no specific citations are included, we believe that the references to the "regulations" are most likely a general reference to the requirements set forth in §1902(bb) of the Social Security Act [42 USC §1396a(bb)], which I have enclosed. A complete search of the Department's records would cost about $100.00 and take additional time. Let us know if you would like us to proceed with a complete sweep of the Department's records.

6. Please provide all documents that indicate that the SC state legislature allowed, condoned or otherwise granted permission for the Department to implement the TPL policy as to (third-party liability) as to FQHCs and/or RHCs.

There are no such documents that specifically deal with implementation of the TPL policy (explained in Bulletins on December 10, 2010 and May11, 2011, at Attachment I of the Respondent's Prehearing Brief, submitted on January 21, 2014) with respect to FQHCs and RHCs. The Department made this change in accordance with its authority as the designated Single State Agency in South Carolina for administration of the Medicaid Program, Title XIX of the Social Security Act. See 42 U.S.C. §1396 et. seq. and S.C. Code Ann. §44-6-10 et. seq. See also, federal regulations at 42 CFR §431.10 and state regulations at S. C. Code R. 126 et seq. regarding the authority to administer the Medicaid Program in South Carolina. As previously explained in our Briefs, we believe that the TPL regulations at 42 CFR §433.135 et seq. require the Department to limit supplementary payment to those for which the patent is liable.

7. Please provide all documents from CMS, or elsewhere, that indicate federal law creates a legal obligation on a state to limit Medicaid PPS reimbursement for Medicare patients to Medicare deductibles and co-payments.

The Regulations and the State Medicaid Manual provision were cited in the Department's Initial Brief. The statutory references are at §1902(a)(25) of the Social

Security Act [42 USC §1396a(a)(25)] and is cited in our Initial Brief dated January 21, 2014.

8. Please provide all documents that indicate Act 77 of the 2010 legislature allows the Department to limit Medicaid PPS reimbursement for Medicare patients to Medicare deductibles and co-payments.

Again, we are unable to find Act 77 of the 2010 Legislative year, but we can find Act 77 of the 2011 Legislative year. It is the Petitioner's position that the Act (77 of the first year, 2011, of the two-year 119th Legislative Session), passed in April of 2011, coupled with Proviso 89.37 of the previous Legislative year, prohibits the Department from imposing rate reductions on FQHCs and other providers. Even if that is so, since it is silent on payment of Medicare coinsurance and deductibles, it does not prohibit (allows) the Department from implementing the "patient responsibility" policy which is the subject of the appeals to which this FOIA request relates. Furthermore, since the Proviso was not carried forward, the Respondent believes the effect of both the Proviso and the Joint Resolution (Act 77) was extinguished.

9. Please provide all documents that indicate Act 77 of the 2010 legislature allows the Department to change the methodology for reimbursing the Medicaid PPS reimbursement to FQHCs and/or RHCs by limiting Medicaid PPS reimbursement for Medicare patients to Medicare deductibles and co-payments.

Again, Act 77 of the 2011 Legislative year, since it is silent on payment of Medicare coinsurance and deductibles, does not prohibit (allows) the Department from implementing the "patient responsibility" policy. Furthermore, the implementations of the "patient responsibility" policy does not in any way affect or limit the reimbursement methodology for FQHC Medicaid beneficiaries, as set forth in the South Carolina Medicaid State Plan.

10. Please provide all documents that indicate Genesis Healthcare has agreed to a reduction in the Medicaid PPS reimbursement for any eligible Medicaid beneficiary for any reason.

There are no such documents. Genesis has apparently not yet formally decided whether to accept the payments offered under the Prospective Payment System (PPS) or continue with the Alternate Reimbursement Methodology (ARM), which every other FQHC in the State has chosen. Instead, Genesis has accepted an interim ARM while it negotiates with the Department over which facility has comparable costs. Genesis may decide to accept the ARM, choose the PPS or appeal the calculation of either.

11. Please provide all documents that indicate the Department is not required to reimburse Genesis Healthcare its' full Medicaid PPS reimbursement for "dual eligible" patients who qualify for Medicare and ***full*** benefits under Medicaid.

We believe that the basic rule is set forth in §1902(n) of the social Security Act [42 USC §1396a(n)]. Enclosed is our State Plan provision. Also enclosed is a Health Care Financing Administration (HCFA, the predecessor of CMS) State Medicaid Director letter which explains the changes made by the Balanced Budget Act of 1997 (BBA). Also enclosed, is the State Medicaid Manual (SMM) provision that anticipated the BBA change. There probably has been additional guidance on the BBA provisions throughout the years, but, as is much of the requested information, federal Medicaid guidance is normally available on CMS' website at www.CMS.gov. Should the ARM not be acceptable, the Department will pay Genesis its full PPS reimbursement for all Medicaid patients. Services to "dual eligible" patients will be subject to the "patient responsibility" policy, and the Department will not pay the coinsurance and deductible for any patients who do not have any liability to Genesis therefor.

Our cost for preparing and reproducing the enclosed information is Sixty-seven and ninety hundredths dollars ($67.90). Please make the check payable to the Department of Health and Human Services and send it to:

Department of Health and Human Services
Department of Receivables
Post Office Box 8297
Columbia, SC 29202-8297

I hope this information is helpful to you. Please contact me if there are any questions. My direct is (803)

Sincerely,

Richard G. Hepfer
Deputy General Counsel

Enclosures

cc: Jeff Saxon, Reimbursement
Lynnette Wilson, Receivables