DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DEC 1 1 2012

Albert A. Delia
Acting Secretary, Office of the Secretary
Department of Health and Human Services
2001 Mail Service Center
Raleigh, NC 27699-2001

Dear Mr. Delia:

I am responding to your September 17, 2012, submission of proposed Medicaid state plan amendment (SPA) 12-019. The proposed SPA would provide for a new state plan home and community-based services (HCBS) benefit, authorized by section 1915(i) of the Social Security Act (the Act), for certain Medicaid eligible adults aged 21 years and older with Alzheimer's and other dementias. I regret to inform you that the Centers for Medicare & Medicaid Services (CMS) is unable to approve this SPA as submitted, because we conclude it does not meet the requirements of sections 1902(a)(23) and 1915(i) of the Act.

Specifically, the state's proposed SPA 12-019 includes targeting criteria that limit the pool of qualified HCBS providers in violation of section 1902(a)(23) of the Act. In addition, the state has not documented that North Carolina has established institutional level of care criteria that are more stringent than the needs-based criteria specified in SPA 12-019, as required by section 1915(i)(1)(B) of the Act. I have provided a more detailed explanation below.

The state's proposed SPA 12-019 would not comport with section 1902(a)(23) of the Act, which permits an individual eligible for medical assistance to obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required. Section 1915(i) of the Act does not provide for waiver of section 1902(a)(23) of the Act. This SPA includes target criteria that would require all section 1915(i) participants to receive "North Carolina State/County Special Assistance Program" benefits, which by the state's definition would make this benefit available only to individuals living in adult care homes. These adult care homes would, in turn, provide or arrange for the HCBS for their residents. Therefore, this requirement would have the effect of making the section 1915(i) SPA benefits available only to individuals residing in provider-owned settings. A state plan HCBS benefit cannot have the impact of limiting the pool of qualified providers from which an individual would receive services, or have the impact of requiring an individual to receive services from the same entity from which they purchase their housing. Such targeting would have the impact of limiting the pool of qualified providers in violation of section 1902(a)(23) of the Act.

Further, under section 1915(i)(1)(B), states must establish more stringent institutionalized level of care criteria than for the needs-based criteria required for eligibility and receipt of section 1915(i) state plan HCBS. The state's SPA does not demonstrate that it has institutional criteria that would be more stringent than the needs-based criteria required for section 1915(i) eligibility. This SPA would require 24-hour caregiver supervision and care as attested by a physician, and does not specify the minimum more stringent institutional criteria that must be met to be

determined eligible for institutional services. Therefore, this SPA does not comport with section 1915(i)(1)(B) of the Act, which requires states to establish more stringent needs-based eligibility criteria for institutionalized care.

For these reasons, and after consulting with the Secretary as required by the Federal regulations at 42 CFR section 430.15(c), I am unable to approve this SPA. If you are dissatisfied with this determination, you may petition for reconsideration within 60 days of receipt of this letter in accordance with the procedures set forth at 42 CFR 430.18. Your request for reconsideration may be sent to Ms. Cynthia Hentz, Centers for Medicare & Medicaid Services, Center for Medicaid and CHIP Services, 7500 Security Boulevard, Mail Stop S2-26-21, Baltimore, MD 21244-1850.

We further wish to call your attention to the following. The state's proposed standards in SPA 12-019 would not ensure that covered services would be provided to individuals residing in home and community-based settings. Under SPA 12-019, individuals receiving section 1915(i) benefits would be required to have a physician-documented need for a "secure setting," without any definition of "secure." The plain meaning of "secure" could include settings that are not home and community-based, and could exclude other settings that are home and community-based. Thus far, the state has not documented how this requirement would be applied, as such, we cannot conclude that the services would be furnished to individuals residing in home and community-based settings. Also, within the SPA the state has not specified a monitoring process for the state to ensure that home and community-based settings standards are met on an on-going basis. We also raise the omission of clear home and community-based setting standards, and a process for the state to ensure that these standards are met. CMS would require more information to ensure that the covered services are within the scope of medical assistance under 1902(a)(10)(A) of the Act, and meet all statutory requirements, including section 1915(i) of the Act.

This conclusion is consistent with our intent described in the proposed regulations published in the Federal Register on May 3, 2012 (26362 Vol. 77 No. 86). We proposed at 42 CFR 441.656(a) to define home and community-based settings to have qualities specified at proposed 42 CFR 441.656(a)(1). As we explained in the preamble to the proposed rule, the purpose of this definition was to ensure that home and community-based settings were non-institutional settings that promote independence and community integration.

If you have any questions or wish to discuss this determination further, please contact Ms. Barbara Edwards, Director, Disabled and Elderly Health Programs Group, 7500 Security Boulevard, Mail Stop S2-14-26, Baltimore, MD 21244-1850.

Sincerely,

Marilyn Tavenner
Acting Administrator