

*Administrator*

Washington, DC 20201

JUN 01 2011

Patricia Casanova, Director  
Office of Medicaid Policy and Planning  
MS 07, 402 W. Washington Street, Room W382  
Indianapolis, IN 46204-2739

Dear Ms. Casanova:

I am responding to your request to approve the State of Indiana's Medicaid State plan amendment (SPA) 11-011, received by the Centers for Medicare & Medicaid Services (CMS) on May 15, 2011. In this amendment, Indiana proposes to prohibit the State Medicaid agency from entering into a contract or grant with providers that perform abortions or maintain or operate facilities where abortions are performed, except for hospitals or ambulatory surgical centers. For the reason set forth below, I am unable to approve SPA 11-011 as submitted, because it does not comply with the requirements of section 1902(a)(23) of the Social Security Act (the Act).


Section 1902(a)(23)(A) of the Act provides that beneficiaries may obtain covered services from any qualified provider that undertakes to provide such services. This SPA would eliminate the ability of Medicaid beneficiaries to receive services from specific providers for reasons not related to their qualifications to provide such services. As you know, federal Medicaid funding of abortion services is not permitted under federal law except in extraordinary circumstances (such as in cases of rape or incest). At the same time, Medicaid programs may not exclude qualified health care providers from providing services that are funded under the program because of a provider's scope of practice. Such a restriction would have a particular effect on beneficiaries' ability to access family planning providers, who are subject to additional protections under section 1902(a)(23)(B) of the Act. These protections also apply in managed care delivery systems. Therefore, we cannot determine that the proposed amendment complies with section 1902(a)(23) of the Act.

For this reason, and after consulting with the Secretary as required by Federal regulations at 42 CFR 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, CHIP and Survey & Certification, 7500 Security Boulevard, Mail Stop S2-01-01, Baltimore, MD 21244-1850.

We assume this decision is not unexpected. As the Indiana Legislative Services Agency indicated in its April 19, 2011 fiscal impact statement, "While States are permitted to waive a recipient's freedom of choice of a provider to implement managed care, restricting freedom of choice with respect to providers of family planning services is prohibited."

If you have any questions or wish to discuss this determination further, please contact Ms. Verlon Johnson, Associate Regional Administrator, Division of Medicaid and Children's Health Operations, Centers for Medicare & Medicaid Services, 233 N. Michigan Avenue, Suite 600, Chicago, Illinois, 60601.

Sincerely,

A handwritten signature in blue ink that reads "Donald M. Berwick". The signature is fluid and cursive, with a large initial "D" and a stylized "B".

Donald M. Berwick, M.D.  
Administrator