

regulations at 42 CFR 447.296(b), the Secretary has interpreted this exception to apply only when the amendment is intended to limit the state's overall definition of DSH to those specified hospitals.

While the additional DSH payment meets the timing criteria for this exception (it was submitted on November 18, 1991, as part of SPA 91-50), it was not intended to limit the State's overall definition of DSHs to those with a Medicaid or low-income utilization percentage at or below the statewide arithmetic mean. This provision did not concern the designation of DSHs at all, but only concerned the payment rate for some already designated hospitals. It provided for a 10-percent additional payment to certain hospitals otherwise designated and receiving DSH payments. Therefore, CMS found this exception not to apply, and disapproved Missouri SPA 92-33.

The notice to Missouri announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Dana Katherine Martin, Director,  
Department of Social Services, Broadway  
State Office Building, P.O. Box 1527,  
Jefferson City, Missouri 65102

Dear Ms. Martin:

I am responding to your request for reconsideration of the decision to disapprove Missouri State Plan Amendment (SPA) 92-33.

The issue is whether the provisions of section 1923(f)(1)(A) of the Social Security Act (the Act) and regulations at 42 CFR 447.296(b)(6) would permit the State to increase disproportionate share hospital (DSH) payments under this State plan amendment submitted after September 30, 1991. Missouri submitted SPA 92-33 on November 18, 1991, as part of SPA 91-50. This amendment would provide for an additional payment to 10 DSH hospitals that have the highest Medicaid utilization in the State and had a high volume of nursery and neonatal care days.

Under the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Pub. L. 102-234), which added section 1923 (f)(1)(A) of the Act and the Federal regulation at 42 CFR 447.296(b)(6), the State cannot increase DSH payments to hospitals based on amendments submitted after September 30, 1991, for payments made during the period January 1, 1992, through September 30, 1992, except in very limited circumstances. The reason for this moratorium on DSH payments was so CMS could determine a state's base DSH allotments for an annual period beginning in Federal fiscal year 1993.

The additional DSH payment included in this amendment is not within the statutory exception for payments under certain SPAs submitted to the Secretary between September 30, 1991, and November 26, 1991. This exception applies only to an

amendment that designates only DSHs with a Medicaid or low-income utilization percentage at or above the statewide arithmetic mean. In regulations at 42 CFR 447.296(b), the Secretary has interpreted this exception to apply only when the amendment is intended to limit the state's overall definition of DSH to those specified hospitals.

While the proposed amendment meets the timing criteria for this exception (it was submitted on November 18, 1991, as part of SPA 91-50), it does not meet the substantive criteria for this exception. The proposed amendment does not limit the State's overall definition of DSHs to those with a Medicaid or low-income utilization percentage at or below the statewide arithmetic mean. This provision did not concern the designation of DSHs at all, but only concerned the payment rate for some already designated hospitals. It provided for a 10-percent additional payment to certain hospitals otherwise designated and receiving DSH payments. Therefore, CMS found this exception not to apply, and disapproved Missouri SPA 92-33.

I am scheduling a hearing on your request for reconsideration to be held on January 23, 2002, at 10:00 a.m.; Richard Bolling Federal Building; Plaza Room 664; 601 East Twelfth Street; Kansas City, Missouri 64106-2808.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786-2055.

Sincerely,  
Thomas A. Scully.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18).  
(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 10, 2001.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 01-31260 Filed 12-18-01; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### Notice of Hearing: Reconsideration of Disapproval of Missouri State Plan Amendment 91-50

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), (HHS).

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing to reconsider the decision to disapprove Missouri State Plan Amendment 91-50, on January 23, 2002, at 10:00 a.m., at the Richard Bolling Federal Building; Plaza Room 664; 601 East Twelfth Street; Kansas City, Missouri 64106-2808.

**CLOSING DATES:** Requests to participate in the hearing as a party must be received by the presiding officer by January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scully-Hayes, Office of Hearings, CMS, Suite L, 2520 Lord Baltimore Drive, Baltimore, Maryland 21244-2670, Telephone: (410)-786-2055.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider the decision to disapprove Missouri State Plan Amendment (SPA) 91-50.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Centers for Medicare & Medicaid (CMS) is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The issue is whether this amendment proposed a retroactive effective date that is not consistent with law for an additional disproportionate share hospital (DSH) payment to the 10 highest Medicaid utilization hospitals in the State that had a high volume of nursery and neonatal care days. This SPA was submitted on November 18, 1991, with a proposed effective date of October 21, 1991.

Under the Medicaid Voluntary Contribution and Provider Specific Tax

Amendments of 1991 (Pub. L. 102-234), which added section 1923(f)(1)(A) of the Act and the Federal regulation at 42 CFR 447.296(b)(6), the State cannot increase DSH payments to hospitals based on amendments submitted after September 30, 1991, for payments made during the period January 1, 1992, through September 30, 1992, except in very limited circumstances. The reason for this moratorium on DSH payments was so CMS could determine a state's base DSH allotments for an annual period beginning in Federal fiscal year 1993.

This proposed amendment is not within the statutory exception for payments under certain SPAs submitted to the Secretary between September 30, 1991, and November 26, 1991. This exception applies only to an amendment that designates only DSHs with a Medicaid or low-income utilization percentage at or above the statewide arithmetic mean. In regulations at 42 CFR 447.296(b), the Secretary has interpreted this exception to apply only when the amendment is intended to limit the state's overall definition of DSH to those specified hospitals.

While this proposed amendment meets the timing criteria for this exception, as it was submitted on November 18, 1991, it does not meet the substantive criteria for this exception. The proposed amendment does not limit the State's overall definition of DSH to those with a Medicaid or low-income utilization percentage at or below the statewide arithmetic mean. This proposed amendment did not concern the designation of DSHs, but only concerned the payment rate for some already designated hospitals. This proposed amendment provided for a 10-percent additional payment to certain hospitals otherwise designated and receiving DSH payments. Therefore, CMS found that this exception did not apply and disapproved Missouri SPA 91-50.

The notice to Missouri announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Dana Katherine Martin,  
Director, Department of Social Services,  
Broadway State Office Building,  
P.O. Box 1527,  
Jefferson City, Missouri 65102.

Dear Ms. Martin:

I am responding to your request for reconsideration of the decision to disapprove Missouri State Plan Amendment (SPA) 91-50, which was submitted on November 18, 1991.

The issue is whether this amendment proposed a retroactive effective date that is not consistent with law for an additional

disproportionate share hospital (DSH) payment to the 10 highest Medicaid utilization hospitals in the State that had a high volume of nursery and neonatal care days. The proposed effective date of the SPA is October 21, 1991.

Under the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Public Law 102-234), which added section 1923(f)(1)(A) of the Social Security Act (the Act) and the Federal regulation at 42 CFR 447.296(b)(6), the State cannot increase DSH payments to hospitals based on amendments submitted after September 30, 1991, for payments made during the period January 1, 1992, through September 30, 1992, except in very limited circumstances. The reason for this moratorium on DSH payments was so the Centers for Medicare & Medicaid Services (CMS), could determine a state's base DSH allotments for an annual period beginning in Federal fiscal year 1993.

This proposed amendment is not within the statutory exception for payments under certain SPAs submitted to the Secretary between September 30, 1991, and November 26, 1991. This exception applies only to an amendment that designates only DSHs with a Medicaid or low-income utilization percentage at or above the statewide arithmetic mean. In regulations at 42 CFR 447.296(b), the Secretary has interpreted this exception to apply only when the amendment is intended to limit the state's overall definition of DSH to those specified hospitals.

While this proposed amendment meets the timing criteria for this exception, as it was submitted on November 18, 1991, it does not meet the substantive criteria for this exception. The proposed amendment does not limit the State's overall definition of DSH to those with a Medicaid or low-income utilization percentage at or below the statewide arithmetic mean. This proposed amendment did not concern the designation of DSHs, but only concerned the payment rate for some already designated hospitals. This proposed amendment provided for a 10-percent additional payment to certain hospitals otherwise designated and receiving DSH payments. Therefore, CMS found that this exception did not apply and disapproved Missouri SPA 91-50.

I am scheduling a hearing on your request for reconsideration to be held on January 23, 2002, at 10:00 a.m.; Richard Bolling Federal Building; Plaza Room 664; 601 East Twelfth Street; Kansas City, Missouri 64106-2808. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786-2055.

Sincerely,  
Thomas A. Scully,  
(Sec. 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 10, 2001.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 01-31261 Filed 12-18-01; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered Species Permit Issuance

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of emergency exemption issuance.

**SUMMARY:** The following applicant has been issued a scientific research permit to conduct certain activities with an endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**FOR FURTHER INFORMATION CONTACT:** Linda Belluomini, Permits Biologist at 503-231-2063.

**SUPPLEMENTARY INFORMATION:** The Washington Department of Fish and Wildlife has been authorized via permit number TE-050644, by the U.S. Fish and Wildlife Service's Pacific Region to capture individuals from the Columbia Basin distinct population segment (DPS) of the pygmy rabbit (*Brachylagus idahoensis*) for a captive propagation program. We issued this permit for the purpose of enhancing the propagation and survival of the Columbia Basin pygmy rabbit. The 30-day public comment period required by the Endangered Species Act (Act) was waived in accordance with section 10(c) of the Act upon a determination that an emergency affecting the health and life of specimens of Columbia Basin pygmy rabbits exists, and that no reasonable alternative is available to the applicant.

The Columbia Basin pygmy rabbit DPS has undergone dramatic annual declines since 1998, and the entire wild portion of this population now consists of fewer than 50 individuals from just 1 known colony on State land in Douglas County, Washington. As part of a captive breeding program, initiated by the Washington Department of Fish and Wildlife (WDFW) during the spring of 2001, an additional 14 individuals from this population are being held in