

COPELAND
COOK
TAYLOR &
BUSH

February 26, 2016

Mississippi Division of Medicaid
Office of the Governor
Office of Policy
ATTN: Margaret Wilson
Walter Sillers Building, Suite 1000
550 High Street
Jackson, Mississippi 39201
Margaret.Wilson@medicaid.ms.gov

Via Hand Delivery

Re: Medicaid State Plan Amendment 16-0011


Dear Ms. Wilson:

Enclosed please find the original and one (1) copy of a comment letter with regard to SPA 16-0011 filed on behalf of Methodist Specialty Care. Please stamp the copy and return to me via our runner.

Please do not hesitate to contact our office if you have any questions or concerns regarding the above.

With best regards,

Sincerely,
COPELAND, COOK, TAYLOR & BUSH, P.A.


Bea Tolsdorf

BT/jjs
Enclosures

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Via Electronic Mail and Hand Delivery

Re: Medicaid State Plan Amendment 16-0011

Dear Ms. Wilson:

Copeland, Cook, Taylor and Bush represents Methodist Specialty Care Center (“Methodist”); and we have been asked to provide written comments concerning the Medicaid State Plan (“Plan”) Amendment 16-0011 (“SPA 16-0011”) which effects, among other things, new bed values for Nursing Facilities for the Severely Disabled (“NFSD”). Pursuant to SPA 16-0011, the new bed value for a NFSD will be “. . . \$159,600, which is 175 percent of the nursing facility bed value. Each year, the January new bed value for the NFSD class will be determined by multiplying the nursing facility new bed value by 175%¹.” This amendment attempts to clarify previous revisions made to the Plan by virtue of State Plan Amendment 15-004 (“SPA 15-004”).

Methodist is currently involved in an administrative appeal before Medicaid concerning the effects of SPA 15-004; specifically, the significant rate decrease to be suffered by Methodist as a result of the reduction in bed value for NFSD. SPA 16-0011 restates the decreased bed value for NFSD despite this challenge, and as such, Methodist opposes SPA 16-0011 for the reasons stated below.

Medicaid is an “Agency” pursuant to Miss. Code Ann. §25-43-1.102 that is required to comply with the Mississippi Administrative Procedures Law (“Law”), the purpose of which is to “. . . increase public accountability of administrative agencies;. . . to increase public access to

¹ SPA 16-0011 attached as Exhibit A.

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governmental information; and to increase **public participation in the formulation of administrative rules.**” (emphasis added). So as to avoid any questions of the Law’s applicability to Medicaid, Miss. Code Ann. §43-13-137, specifically states, “[t]he division is an agency as defined under Section 25-43-3 and, therefore, must comply **in all respects with the Administrative Procedures Law**, Section 25-4 3-1, et seq.” (emphasis added). As such, “[a]t least twenty-five (25) days before the adoption of a rule an agency shall cause notice of its contemplated action **to be properly filed with the Secretary of State for publication in the administrative bulletin. . .**” Miss. Code Ann. §25-43-3.103(1)(emphasis added). Medicaid has made no such filing with regard to SPA 16-0011, and thus has not complied with the Law. This failure to provide notice as prescribed by Miss. Code Ann. §25-43-3.103(1) will invalidate SPA 16-0011 should Medicaid continue to move forward with the proposed amendment.

As mentioned previously, Methodist is currently engaged in an administrative appeal before the Division of Medicaid. This appeal challenges the appropriateness of SPA 15-004 which may in turn, effect SPA 16-0011, as the two amendments are inextricably related. Should Methodist prevail in their appellate efforts, Medicaid will be required to revise SPA 15-004 to reflect judicial dictates and the same will be required from SPA 16-0011. It is therefore, premature (and presumptuous) to propose further Plan Amendments that build upon contested rates prior to the conclusion of any administrative appeal related to those rates.

The appeal referenced above was instituted by Methodist upon being informed that Medicaid had improperly adopted SPA 15-004 which proposed to decrease the bed value for Methodist from 328.178% of the Nursing Facility new bed value to 175% of the Nursing Facility new bed value. This change will obviously result in a significant change to the Medicaid rate calculation for Methodist; but more importantly, the change in new bed value for Methodist, does not promote the purpose of the property payment.

Chapter 3, Section 4(e)(1) states, “[t]he fair rental system establishes a facility’s value based on its age. . . . The **new bed value** minus the accumulated depreciation multiplied by total beds determines the facility value.” Further Chapter 3, Section 4(e)(2) goes on to state, “[e]ach year a state-wide **new bed value** is determined.” (emphasis added). It is clear that the purpose of the fair rental system is to determine how much it would cost, per bed, to build a like facility at present day costs; and thereafter apply a depreciation factor to the new bed value for existing facilities.

In SPA 15-004, Medicaid recognized that the cost to construct a new nursing facility had increased considerably over the years, and thus rebased the new bed value as of January 1, 2015 by increasing it to \$91,200. This was an increase of \$38,246, or 72.22%, over the prior year bed value of \$52,954. In lieu of increasing Methodist’s new bed value by a similar amount, Medicaid changed the adjustment factor from 328.178% to 175%, thus reducing Methodist’s new bed value from \$226,737 to \$159,600. Methodist was the only long-term care facility in the State that experienced a decrease in their new bed value. As discussed further below, a new bed value of \$159,600 is *less* than the actual costs per bed incurred by Methodist when constructing its facility over eleven years ago.

As mentioned above, prior to SPA 15-004 (and now SPA 16-0011), the new bed value for Methodist was determined, in part, by adjusting the new nursing facility bed value by 328.178%; however, even at a 328.178% adjustment, the property payment provided to Methodist was below the cost per bed to construct the facility when it was built and opened in 2004. As reported in Exhibit A, the actual cost per bed for construction of Methodist was \$169,108. The 2004 new nursing facility bed value was \$32,475; which when adjusted by 328.178% amounted to a bed value of \$139,051. Therefore, the 328.178% adjustment has not consistently represented a true cost per new bed for a new NFSD. Despite that, Methodist has always believed, until the passage of SPA 15-004, that Medicaid had acted reasonably in determining the applicable adjustment and corresponding bed value. Conversely, the 175% adjustment and \$159,600 new bed value proposed in SPA 16-0011 is *not reasonable* and Medicaid has not performed its due diligence, or acted in good faith, in evaluating the appropriateness of the proposed new bed value. Methodist would contend that it is more appropriate to return to the 328.178% adjustment, as this will result in a new bed value that more accurately reflects present day construction costs for a NFSD.

Methodist is the only facility of its kind in the state of Mississippi; providing skilled clinical care in a long term setting for severely disabled individuals. As a facility unlike any other in the state, the only way to accurately determine the cost of a new NFSD in Mississippi is to take the 2004 Methodist construction costs and apply a 2016 inflation index and trended construction costs. Methodist has done exactly that, and a chart detailing such is attached as Exhibit A.

As outlined in Exhibit A, it is estimated that to construct a like facility in Mississippi today would cost approximately \$295,286—a far cry from the \$159,600 proposed in SPA 16-0011. Methodist arrived at the \$295,286 by simply applying the 2016 trended construction costs and inflation index to the line item costs incurred by Methodist in 2004. Given that the cost per bed outlined Exhibit A reflects the **exact** costs incurred in 2004 by Methodist scaled to present day construction costs, it is evident that \$159,600 does not adequately or reasonably represent **new NFSD** bed values. Even without Exhibit A, one would have to accept the assumption that construction costs have *decreased*—significantly—over the past eleven (11) years to find that \$159,600 is a reasonable **new NFSD** bed value. Meaning, it cost \$169,108 per bed to build Methodist in 2004, but in 2016 it would cost a provider only \$159,600 per bed to build a **new NFSD**. There has been no decrease in construction cost since 2004, and therefore, \$159,600 does not reflect a reasonable new bed value for NFSD. Although Medicaid representatives would like to disregard the data or argue that the numbers in Exhibit A are inflated and inaccurate, as Aldous Huxley said, “[f]acts do not cease to exist because they are ignored.”²

Further, Medicaid has conducted no such analysis of their own to evaluate construction costs for a new NFSD. Methodist contends that Exhibit A offers the most reliable benchmark by

² Huxley, Aldous. *Complete Essays 2, 1926-1929*. Ivan R. Dee, 2000. Print.

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which to measure new construction costs for a NFSD. If Medicaid is not willing accept the numbers presented in Exhibit A (or the testimony presented at the January 26-27, 2016 Administrative Appeal regarding SPA 15-004) Methodist would ask that prior to adopting SPA 16-0011, Medicaid engage in such an endeavor. By doing so, the “guess work” by Medicaid would be eliminated and NFSD would be paid a property rate that coincides with present day construction costs—as all other nursing facilities in the state are.

We appreciate the opportunity to share these concerns with you. If you have any questions, please call me, Tammy Voynik, General Counsel to Methodist or Mark Adams, its CEO.

With best regards,

Sincerely,
Copeland, Cook, Taylor & Bush, P.A.

Thomas L. Kirkland, Jr. / *ml*
Thomas L. Kirkland, Jr.

TLK:jjj

cc: Gary Armstrong
Mark Adams
Tammy Voynik

Methodist Specialty Care Center Bed Value						
	2004-CON	2004-MRC Actual	2015-Updated Cost	% of Increase	2015-Industry Avg	% of Increase
A) Construction Cost	\$7,209,000	\$7,319,256	\$11,314,000	54.6%	\$13,106,890	79.1%
B) Total Fixed Equipment Cost	Included in 'A'		\$545,083		\$0	
C) Total Non-Fixed Equipment Cost	\$1,315,798	\$1,493,152	\$2,209,865	48.0%	\$2,209,865	48.0%
D) Land Cost	\$1,052,908	\$544,135	\$2,427,152	346.1%	\$2,427,152	346.1%
E) Site Preparation Cost	Included in 'D'				\$0	
F) Fees (Architectural, Consultant, etc)	Included in 'A'	\$789,934	\$1,221,069	54.6%	\$1,414,567	79.1%
G) Contingency Reserve	Included in 'A'				\$0	
Total Capital Expenditure	\$9,577,706	\$10,146,477	\$17,717,169	74.6%	\$19,158,474	88.8%
Beds	60	60	60		60	
Average Cost Per Bed	\$159,628	\$169,108	\$295,286		\$319,308	
Medicaid New Construction Bed Value	\$32,475	\$32,475	\$91,200		\$91,200	
Percent Markup	328.18%	328.18%	328.18%		328.18%	
Medicaid Bed Value After Markup	\$106,576	\$106,576	\$299,300		\$299,300	
Add Back Bed Value	\$32,475	\$32,475	\$91,200		\$91,200	
Medicaid Bed Value After Add Back	\$139,051	\$139,051	\$390,500		\$390,500	
Total Fixed Equipment Cost						
Lift System			\$390,510			
Oxygen Tank Renovation			\$154,573			
Total Square Feet 55,774						
Construction Cost Per Square Foot	\$129.25	\$131.23	\$202.85		\$235.00	