

FEB 08 2008

Mr. Paul Reinhart, Director  
Medical Services Administration  
Michigan Department of Community Health  
Capitol Commons Center  
400 S. Pine Street  
P.O. Box 30479  
Lansing, Michigan 48909

Dear Mr. Reinhart:

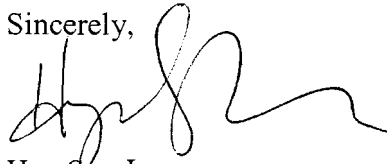
Enclosed for your records is an approved copy of the following State Plan Amendment (SPA).

Transmittal # 06-007

Amendment will allow the Michigan Department of Community Health to coordinate administrative hearings with the Michigan Office of Administrative Hearings and Rules – Effective date May 15, 2006.

If you have any questions, please contact Cynthia Garraway by telephone at (312) 353-8583 or by e-mail at [Cynthia.Garraway@cms.hhs.gov](mailto:Cynthia.Garraway@cms.hhs.gov).

Sincerely,



Hye Sun Lee  
Acting Associate Regional Administrator  
Division of Medicaid and Children's Health

cc: Nancy Bishop

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL**  
FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER:  
06 - 07  
2. STATE:  
Michigan  
3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR  
HEALTH FINANCING ADMINISTRATION  
DEPARTMENT OF HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE  
May 15, 2006

5. TYPE OF PLAN MATERIAL (Check One):  
 NEW STATE PLAN       AMENDMENT TO BE CONSIDERED AS NEW PLAN       AMENDMENT  
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:  
42 CFR 431.10

7. FEDERAL BUDGET IMPACT:  
a. FFY 06 \$ -0-  
b. FFY 07 \$ -0-

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  
Attachment 4.16-A, pages H-1 thru ~~H-7~~ H-9 Cc.

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):  
N/A - new pages

10. SUBJECT OF AMENDMENT:  
MDCH/Office of Administrative Hearing and Rules cooperative agreement

11. GOVERNOR'S REVIEW (Check One):  
 GOVERNOR'S OFFICE REPORTED NO COMMENT       OTHER, AS SPECIFIED:  
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED      Paul Reinhart, Director  
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL      Medical Services Administration

12. SIGNATURE OF STATE AGENCY OFFICIAL:  
*Paul Reinhart / Sm*

16. RETURN TO:  
Medical Services Administration  
Program/Eligibility Policy Division - Federal Liaison Unit  
Capitol Commons Center - 7<sup>th</sup> Floor  
400 South Pine  
Lansing, Michigan 48933  
Attn: Nancy Bishop

13. TYPED NAME:  
Paul Reinhart

14. TITLE:  
Director, Medical Services Administration

15. DATE SUBMITTED:  
*June 15, 2006*

**FOR REGIONAL OFFICE USE ONLY**  
17. DATE RECEIVED: 6/16/06      18. DATE APPROVED: FEB 08 2006

**PLAN APPROVED - ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVED MATERIAL:

20. SIGNATURE OF REGIONAL OFFICIAL:  
*[Signature]*

21. TYPE NAME:  
Ruth A. Hughes

22. TITLE:  
Acting Associate Regional Administrator  
Division of Medicaid and Children's Health

23. REMARKS:  
**RECEIVED**  
JUN 16 2006  
DMCH - IL/IN/OH

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**

State of MICHIGAN

***Cooperative Agreements***

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**JOINT OPERATING AGREEMENT**

Between the

**Michigan Department of Community Health**  
a Principal State Department

and the

State Office of Administrative Hearings and Rules  
a Type I Agency

This agreement is entered into to implement Executive Order (E.O.) 2005-1 in a manner consistent with federal law. E.O. 2005-1 created the State Office of Administrative Hearings and Rules to consolidate rulemaking and administrative hearing functions within one Type I Agency, within the Department of Labor and Economic Growth.

WHEREAS, the Michigan Department of Community Health (MDCH) is a principal department of Michigan state government, as defined in MCL § 16.104, and is designated as the responsible Single State Agency (SSA) administering the Medicaid program in the state; and

WHEREAS, the State Office of Administrative Hearings and Rules (SOAHR), a Type I Agency (MCL § 16.103), was created by Governor Jennifer M. Granholm in E.O. 2005-1 and amended in E.O. 2005-26; and

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WHEREAS, MDCH and SOAHR desire to jointly conduct operations to the extent necessary to assure MDCH control over Medicaid decisions and determinations under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements, representations, provisions and covenants herein, MDCH and SOAHR, intending to be legally bound, agree as follows:

#### **I. SUMMARY OF THE AGREEMENT**

The MDCH is responsible for administration of the federal Medicaid program, under Title XIX of the Social Security Act and rules promulgated under that authority. 42 U.S.C. 1396 *et al.* and 42 CFR Part 430 *et al.*

Title XIX requires states to complete and follow a State Plan, which includes certain required assurances. The state must "provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan." 42 U.S.C. 1396a(a)(5). The MDCH is designated as Michigan's Single State Agency. (Michigan's Medicaid State Plan, § 1.1(b), p. 3.)

The phrase "single state agency" (SSA), sometimes referred to as the Medicaid agency, has extensive meaning and brings about additional duties. Its ability to delegate its authority and control is limited by 42 CFR 431.10, which provides in part:

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In order for an agency to qualify as the Medicaid agency—

- (1) The agency must not delegate, to other than its own officials, authority to—
  - (i) Exercise administrative discretion in the administration or supervision of the plan, or
  - (ii) Issue policies, rules, and regulations on program matters.
- (2) The authority of the agency must not be impaired if any of its rules, regulations, or decisions are subject to review, clearance, or similar action by other offices or agencies of the State.
- (3) If other State or local agencies or offices perform services for the Medicaid agency, they must not have the authority to change or disapprove any administrative decision of that agency, or otherwise substitute their judgment for that of the Medicaid agency with respect to the application of policies, rules, and regulations issued by the Medicaid agency.

42 CFR 431.10(e).

This agreement makes clear the supervisory and oversight powers and responsibilities of the MDCH. In form and substance, the administrative law judges' decisions continue to be subject to the oversight, supervision, and authority of the Director of the MDCH.

## II. DELEGATION TO ADMINISTRATIVE LAW JUDGES

Medicaid decision-making authority is narrowly drawn and subject to the following limitations:

- (1) MDCH has delegated to SOAHR authority to issue decisions entitled "Decisions and Orders" (D & Os) for only certain case types. Administrative Law Examiners (ALEs) are authorized by MDCH to issue only Proposals for

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Decisions for Medicaid Provider appeals brought pursuant to the Social Welfare Act, 1939 PA 280, MCL 400.1 *et seq.*, and 1979 AC R 400.3401 *et seq.*

(2) In all other cases referred to SOAHR by MDCH, ALEs are authorized to issue D& Os. D & O's will be issued by the ALEs in a timely manner and will be forwarded for review to those individuals within MDCH designated by MDCH by case type or case type grouping. MDCH will have the following periods of time to review the D &Os:

(a) **Five (5) business days from the date of receipt of a D & O for appeals involving:**

i. Waivers: Adult Benefit, Family Planning, Habilitation and Supports, Children's, MIChoice, and Medicaid Managed Specialty Supports and Services Concurrent 1915(b)/(c).

ii. Other Cases: Hospital Admission denials, Nursing Home eligibility, OBRA/Preadmission Screening and Annual Resident Review (PASARR); Children's Special Health Care Services including prior authorization; Programs for All Inclusive Care to the Elderly (PACE), Substance Abuse Services, and all other appeals not specified in Section II(1) or II(2)(b) .

(b) **Three (3) business days from the date of receipt of a D & O for appeals involving:** Breast and Cervical Cancer Prevention

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and Treatment, Beneficiary Monitoring Program, Medicaid client general issues, Disenrollment from Medicaid Managed Care, Family and Neighborhood Services, Home Help Services program, Medicare Buy-In, Exceptions from Medicaid Managed Care, Maternity Outpatient Medical Services, Medicaid Medical Services Billing, Office of Medical Affairs, Prior Authorization, Physical Disability Services, Pharmacy Benefits, Policy Exception, Managed Care Organization/Qualified Health Plan, Transportation reimbursement, Vision-glasses.

(3) Prior to the expiration of the review time periods specific in 2(a) and 2(b),

MDCH must exercise one of the following options:

- (a) If MDCH disagrees with the D & O, MDCH must
  - i. Issue a Final Decision and Order resolving the case, or
  - ii. Issue an Order Converting the Decision and Order to a Proposal for Decision requiring supplemental action by either the ALE or the parties.
- (b) If MDCH agrees with the D & O, MDCH will take no action and the D & O shall become the final decision of MDCH as a matter of law, at the expiration of the review period.

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- (4) ALEs are not authorized to issue D & Os in those cases in which the ALE believes MDCH policy to be out of conformity with case law, statute or promulgated regulation.
- (5) ALEs are not authorized to make decisions, either through D & Os or Proposals for Decision, on constitutional grounds, overrule statues, overrule promulgated regulation, or overrule or make exceptions to department policy.
- (6) In cases where the ALE's recommended remedy exceeds his or her delegated authority, the ALE will make a Recommended Policy Hearing Authority Decision to MDCH's Director, and the Director will issue a Final Decision and Order. In these instances, the review time period specified in subsection II(2) shall not apply.
- (7) If, following the expiration of D & O review period the D & O has become the final decision of MDCH, MDCH retains the authority pursuant to MCL 24.287 *et seq.* and 1979 AC R 400.901 *et seq.*, to request a rehearing or reconsideration. The Administrative Law Manager (ALM) shall review all requests for rehearing or reconsideration and shall issue an order which grants or denies all requests for rehearing or reconsideration.
- i. **Rehearing:** If the ALM grants rehearing, the case shall be returned to SOAHR for rehearing. The rehearing will be noticed and conducted by SOAHR in the same manner as the original hearing. Upon the close of the record, SOAHR will

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issue a Rehearing D & O that is subject to MDCH review pursuant to subsection II(2). If MDCH agrees with the Rehearing D & O, the Rehearing D & O shall become the final decision of MDCH as a matter of law, at the expiration of the review period.

- ii. **Reconsideration:** If the ALM grants Reconsideration, the ALM shall issue a Reconsideration Order. If the ALM grants reconsideration, the decision may be modified without further proceedings unless the ALM determines there is a need for further testimony for the purposes of reconsideration. If the ALM determines that further testimony is required, additional hearing(s) shall be scheduled. The reconsideration hearing will be noticed and conducted by SOAHR in the same manner as the original hearing. Upon the close of the record, SOAHR will issue a Reconsideration D & O that is subject to MDCH review pursuant to subsection II(2). If MDCH agrees with the Reconsideration D & O, the Reconsideration D & O shall become the final decision of MDCH as a matter of law, at the expiration of the review period.
- iii. **Judicial Review:** All D & Os, Orders Denying Rehearing or Reconsideration, Rehearing D & Os, and Reconsideration D &

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Os are subject to judicial review pursuant to MCL 24.301 *et seq.* and 1979 AC R 400.901 *et seq.*

### **III. TRAINING**

In coordination with the SOAHR Executive Director, MDCH will provide training to ALEs assigned to their cases and, where applicable, will cooperate with the SOAHR Executive Director to secure all possible federal, state, and foundation training funds available.

### **IV. SPECIAL PROVISIONS**

SOAHR will comply with:

- 42 USC 1396 *et seq.*;
- 42 CFR 400 *et seq.*;
- MCL 400.1 *et seq.*;
- All Medicaid Policy;
- 1979 AC, R 400.901 *et seq.*;
- 1979 AC, R 400.3401 *et seq.*; and
- MDCH Medicaid hearings policy as found at:  
[http://www.michigan.gov/mdch/0,1607,7-132-2946\\_5093-16825--00.html](http://www.michigan.gov/mdch/0,1607,7-132-2946_5093-16825--00.html)

### **V. COMPLIANCE CONCLUSION**

The MDCH is required to provide a hearing before the agency, when requested by a recipient or provider. By providing a dual relationship of responsibility and oversight and by vesting review authority in MDCH, the federal law requirements are met, while following E.O. 2005-1.

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**VI. PRIOR AGREEMENTS**

Upon execution by both parties, revised Joint Operating Agreement replaces and supercedes the Joint Operating Agreements executed by the parties on May 5, 2006 and October 28, 2006.

 11/23/2007  
A. Edwin Dore      Date  
Chief Deputy Director  
MDCH

 11/5/07  
Peter L. Plummer      Date  
Executive Director  
SOAHR

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