

judicial review are met. Pursuant to 42 CFR 418.311 (which incorporates 42 CFR part 405, subpart R), the provider may appeal an intermediary's cap determination in accordance with the requirements contained in either 42 CFR 405.1811 or 42 CFR 405.1835, whichever is applicable. In accordance with the applicable regulations, any such appeal must be filed to the appropriate authority no later than 180 days from the date of the contractor's determination. If a provider properly pursues and exhausts the administrative appeals process and receives a final agency decision, the final agency decision is subject to judicial review in accordance with 42 CFR part 405, subpart R and 42 U.S.C. 1395oo.

In addition, all hospice cap determinations based on application of a patient-by-patient proportional methodology are subject to reopening (for up to 3 years in accordance with the requirements of 42 CFR 405.1885). Thus, a hospice cap payment determination made pursuant to this Ruling may be reopened at a later time (e.g., to revise the proportional allocations to account for additional days of care after the year in question, which would increase the denominators of some proportions and thus decrease some fractional allocations). We recognize that this might increase uncertainty, but this concern must be balanced against other considerations such as payment accuracy and timeliness of payment determinations. Nothing in this Ruling, however, shall be construed as requiring reopening and recalculation of cap determinations for an earlier year when there is a recalculation for any given year.

### Ruling

First, it is CMS' Ruling that the agency and the Medicare contractors will resolve and grant relief in each properly pending appeal in which a hospice provider seeks review of a final determination of overpayment for a cap year ending on or before October 31, 2011 by challenging the validity of the methodology set forth in 42 CFR 418.309(b)(1). CMS will grant relief in each appeal by directing its Medicare contractors to recalculate the final overpayment determination in accordance with the patient-by-patient proportional methodology described in Section 2 of this Ruling.

Second, it is also CMS' Ruling that the pertinent administrative appeals tribunal (that is, the PRRB, the Administrator of CMS, the fiscal intermediary hearing officer, or the CMS reviewing official) and the appropriate Medicare contractor will process, in

accordance with the instructions set forth in Sections 3 and 4 of this Ruling, each appeal (including any interlocutory appeals) and each putative claim (in such appeal) seeking review of a hospice cap overpayment determination for a cap year ending on or before October 31, 2011 on the basis that the methodology set forth in 42 CFR 418.309(b)(1) is invalid.

Third, it is CMS' further Ruling that the agency and the appropriate Medicare contractor will process, in accordance with the instructions set forth in Section 5 of this Ruling, each properly pending appeal seeking review of a hospice cap overpayment determination for a cap year ending on or before October 31, 2011 on the basis that the methodology set forth in 42 CFR 418.309(b)(1) is invalid and that is remanded by the administrative appeals tribunal and is found to qualify for relief under this Ruling.

Fourth, it is CMS' further Ruling that, pursuant to 42 CFR 405.1801(a), 405.1885(c)(1), (2), this Ruling is not an appropriate basis for the reopening of final determinations of the Secretary or a Medicare contractor or of any decision by a reviewing entity, except to the extent that this Ruling provides for reopening in accordance with existing regulations and policy; accordingly, it is hereby held that this Ruling does not provide an independent basis for the administrative appeals tribunals, the fiscal intermediaries, and other Medicare contractors to reopen any final hospice cap determination in a manner inconsistent with existing regulations and policy.

Fifth, it is also CMS' Ruling that, pursuant to 42 CFR 401.108, this Ruling is a final precedent opinion and order and a binding statement of policy that does not give rise to any putative retroactive rulemaking issues; in any event, it is hereby held that, if this Ruling were deemed to implicate potential retroactive rulemaking issues, then, in accordance with 42 U.S.C. 1395hh(e)(1)(A), retroactive application of this Ruling is necessary to ensure continuing compliance with 42 U.S.C. 1395f(i)(2) and to serve the public interest.

Sixth, it is also CMS' Ruling that, pursuant to 42 CFR 401.108, this Ruling is a final precedent opinion and order and a binding statement of policy. This Ruling is not a substantive or legislative rule requiring notice and comment; to the extent that this Ruling is deemed to be a substantive or legislative rule, it is CMS's Ruling that good cause exists to dispense with rulemaking procedures pursuant to 42 U.S.C. 1395hh(b)(2)(C) and 5 U.S.C. 553(b)(B) to ensure

continued compliance with 42 U.S.C. 1395f(i)(2).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 14, 2011.

**Donald M. Berwick,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2011–10694 Filed 4–28–11; 4:15 pm]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical, Treatment and Health Services Research Review Subcommittee.

*Date:* July 12, 2011.

*Time:* 8 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Katrina L Foster, PhD, Scientific Review Officer, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2019, Rockville, MD 20852, 301-443-4032, [katrina@mail.nih.gov](mailto:katrina@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 2, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory  
Committee Policy.*

[FR Doc. 2011-11210 Filed 5-6-11; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Systematic Review of Neonatal Medicine.

*Date:* May 23, 2011.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call.)

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, Md 20892, 301-435-6680, [skandasa@mail.nih.gov](mailto:skandasa@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 3, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory  
Committee Policy.*

[FR Doc. 2011-11201 Filed 5-6-11; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, *PAR—09-214:* NHLBI Systems Biology.

*Date:* May 23-24, 2011.

*Time:* 8 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting.)

*Contact Person:* Ai-Ping Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301-435-1777, [zouai@csr.nih.gov](mailto:zouai@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurodifferentiation, Plasticity, and Regeneration Study Section.

*Date:* June 1-2, 2011.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

*Contact Person:* Carole L Jelsema, PhD, Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435-1248, [jelsemac@csr.nih.gov](mailto:jelsemac@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Cellular and Molecular Biology of Glia Study Section.

*Date:* June 2-3, 2011.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Toby Behar, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435-4433, [behart@csr.nih.gov](mailto:behart@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Macromolecular Structure and Function C.

*Date:* June 9, 2011.

*Time:* 10 a.m. to 11 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call.)

*Contact Person:* John L. Bowers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435-1725, [bowersj@csr.nih.gov](mailto:bowersj@csr.nih.gov).

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group, Clinical and Integrative Cardiovascular Sciences Study Section.

*Date:* June 16-17, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

*Contact Person:* Russell T Dowell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435-1850, [dowellr@csr.nih.gov](mailto:dowellr@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, *Small Business:* Medical Imaging.

*Date:* June 16-17, 2011.

*Time:* 8 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

*Contact Person:* Leonid V. Tsap, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435-2507, [tsapl@csr.nih.gov](mailto:tsapl@csr.nih.gov).

*Name of Committee:* Immunology Integrated Review Group, Innate Immunity and Inflammation Study Section.

*Date:* June 16-17, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaylord National Hotel & Convention Center, 201 Waterfront Street, National Harbor, MD 20745.

*Contact Person:* Tina McIntyre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301-594-6375, [mcintyrt@csr.nih.gov](mailto:mcintyrt@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Biophysics of Neural Systems Study Section.

*Date:* June 16-17, 2011.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.