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DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
JFK Federal Building, Government Center
Room 2275
Boston, Massachusetts 02203

Patty

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Division of Medicaid and Children's Health Operations/Boston Regional Office

December 22, 2010

Brenda M. Harvey, Commissioner
Department of Health and Human Services
11 State House Station
Commissioner's Office
Augusta, Maine 04333-0011

Dear Commissioner Harvey:

We have completed our review of proposed State plan amendment (SPA) No. 10-014 and find that we cannot approve it at the present time. We need additional information concerning several issues before we can make a final decision. Please provide the additional information as discussed below.

SPA 10-014, received September 23, 2010, transmitted a proposed amendment to your Department's approved Title XIX State plan to provide more information and details regarding coverage of behavioral health services. You requested an effective date of September 1, 2010.

As you are aware, CMS and the State participated in an informal review of this SPA earlier this fall. As part of this review, CMS submitted informal questions and comments regarding the proposed SPA, and the state subsequently responded on December 2, 2010. CMS staff and subject matter experts have reviewed the State's answers to the informal questions; however, CMS requires additional information in order to approve this SPA.

A. General Questions and Comments

1. Please revise the SPA's pagination.
 - a. As submitted, each page of the SPA is paginated as "Attachment 3. 1-A Page 7"
 - b. We advised re-paginating the SPA as "Attachment 3. 1-A Page 7(a)," "Attachment 3.1-A Page 7(b)," "Attachment 3.1-A Page 7(c)," etc.
2. EPSDT: Does the State provide all of the services listed in this section of the State plan to all individuals age 21 and under if determined medically necessary as required by section 1905(r) of the Social Security Act?
3. Please define what the State means by "All Staff practice within the scope of their licensure or certification? The following will include questions relative to each service when the State refers to a "certified" individual vs. a licensed, or an individual under the direction of a licensed individual. In that case we need a description of the qualifications for each individual "under the direction of a licensed individual."

4. On page 7, item 2, second paragraph, please remove the reimbursement discussion from attachment 3.1A and transport to the reimbursement section of Attachment 4.19 – B

B. Coverage Questions and Comments

Crisis Resolution Services

5. Please provide the qualifications of the “Mental Health Rehabilitation Technician under the supervision of a licensed clinical social Worker.”

Crisis Residential Services

6. Please provide an assurance that the setting of this service does not include IMDs, and is provided in a setting that does not meet the criteria of an IMD.
7. Please provide an explanation in the SPA of what “time-limited” means. How would this apply to individuals under the age of 21 who are covered by the EPSDT provision?
8. Is there a fixed time limitation, and if so, what is that time period? Or, is the time limitation based on the needs of the individual?
9. Please provide the qualifications of the “Mental Health Rehabilitation Technician under the supervision of a Licensed Clinical Social Worker.”

Outpatient Services

10. Please provide how the services in this service description differ for children, and what age limit does the State consider as “children?”
11. Please provide the qualifications of a “Certified Alcohol and Drug Counselor under the supervision of a Licensed Alcohol and Drug Counselor.”

Family Psychoeducational Treatment Family Psycho Educational Treatment

12. Please provide an assurance that this service is provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual where it discusses family involvement.
13. Please provide the qualifications of the “Mental Health Rehabilitation Technician under the supervision of a Licensed Clinical Social Worker.”

Intensive Outpatient Services (IOP)

14. Please further define what is meant by those services certified as such by the Office of substance Abuse. And the relating DHHS regulations. The State cannot simply quote DHHS regulations, but must provide a summary of those regulations that are more specific in the State plan. Also define “qualified staff.” What type of staff, and what qualifications must they meet.
15. Please further describe/define what is meant by “members who meet ASAM placement criteria level II.1 or level II.5.
16. Please provide the qualifications of the “Certified Alcohol and drug Counselor under the supervision of a Licensed Alcohol and Drug Counselor.”

Medication Management Services

17. Please specify whether this service excludes opioid treatment medications, which are covered elsewhere in the SPA.

Children's Assertive Community Treatment

18. In the second paragraph after the service description, the State indicates that "This service is currently listed as by report. The service is now reimbursed as fee for service with a unit of service as a per diem. Please provide a more complete reimbursement methodology in Attachment 4.19, and remove from Attachment 3.1-A of the State plan.
19. Please provide an assurance that this service is provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual where it discusses family therapy.
20. Please provide qualifications for Behavioral Health Professional.

Children's Home and Community Based Treatment

21. Please provide an assurance that this service is provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual where it discusses family therapy.
22. Please provide qualifications for Behavioral Health Professional.

Collateral Contacts

23. Please explain why this service is a discreet service, and would not be a continuing part of the other behavior services ongoing treatment plan? It seems that this should be integrated into the other services as part of those services.
24. If this remains a separate service, please provide qualifications for Behavioral Health Professional.

Opioid Treatment

25. Please provide the qualifications of the "Certified Alcohol and Drug Counselor under the supervision of a Licensed Alcohol and Drug Counselor."

Children's Behavior Health Day Treatment

26. Please explain why this service must be delivered in conjunction with an educational program in a School as defined in 65.03.4. What is 65.03-4? Also, in what capacity will children's behavioral health services be provided in conjunction with a residential treatment program?
27. It appears that the State is restricting providers to the school system. The language in the State plans reads under the provider section. "Schools provide the services and the service is performed by a Qualified Staff are clinicians qualified to provided Behavioral Health Day Treatment in the school setting and include: Psychiatrists, Psychologists, LCSWs, LMSWs, LCPCs, LMFTs and Behavioral Health Professionals." Please explain.

Intensive Integrated Neurorehabilitation

28. Please describe the types of medical/rehabilitative personnel providing this service, and provide qualifications for those who are not licensed.

Neuro-Behavioral Rehabilitation

29. Please describe the types of medical/rehabilitative personnel and their extenders providing this service, and provide qualifications for those who are not licensed.

Self care/Home Management Reintegration

30. Please explain how the code 97535-HQ is intended to clarify the service description, and again, please provide the qualifications of the "certified medical/rehabilitative personnel and their extenders within a coordinated team process. How does this service not overlap with the other rehab services included in this plan for the other service description? This service does not include a clear and concise description of the service.

Community/Work Reintegration

31. Please explain how the codes 97537 and 97537-HQ are intended to clarify the service description, and again, please provide the qualifications of the "certified medical/rehabilitative personnel and their extenders within a coordinated team process. How does this service not overlap with the other rehab services included in this plan for the other service descriptions?

Community Support services

32. Please explain how this service is not already an inclusive service provided under one of the other services in this part of the State plan. Also, provide an assurance that this service would not be provided to individuals with a sole diagnosis of MR.
33. Please provide qualifications for those members of the service team who are not licensed.

Community Rehabilitation

34. Please clarify how this service differs from the other services offered under rehab of this State plan, and how there is no duplication between services.
35. Does "case management" include the following: assessment, plan of care development, referral and related activities, and monitoring and follow-up activities? If so, please move the case management service to section 19 of the State plan and meet the requirements for TCM.

Assertive Community Treatment

36. Is this service provided to both adults and children? If so, for children, how would this service differ from the service entitled children's assertive treatment outlined earlier in the SPA?

37. Please provide provider qualifications for items 4 and 5 where the State mentions "certified" providers and item 6 for substance abuse counselors.

Daily Living Supports

38. Please revise service definition to clarify that this service is rehabilitative rather than habitative in nature and will help the individual to regain or restore these skills rather than attain them.

Day Supports

39. Please provide qualifications for MHRTs.

Specialty Group Services

40. Please explain how when the sessions are co-facilitated by two non-licensed mental health professionals, a licensed mental health professional must supervise the co-facilitation. How would this be accomplished?
41. Are the providers limited to Mental Health Agencies? If so, can any qualified individual enroll with the Mental Health Agencies?

Psychologists

42. Please provide an assurance that this service is not offered to individuals residing in an IMD.

Substance Abuse Treatment Services

43. Please provide an assurance that this service is not offered to individuals residing in an IMD.
44. Please provide an assurance that this service is provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual where it references treating the needs of the family.
45. How does this service differ from the other substance abuse services provided throughout this section of the State plan?

Intensive Outpatient Services

46. Please explain how this service differs from the service with the same heading earlier in the SPA? If this is duplicative, please remove.

Opioid Treatment

47. Please explain how this service differs from the service with the same heading earlier in the SPA. If this is duplicative, please remove.

Day Health Services

48. Please remove the line that reads: "Noon meals and snacks are provided as a part of day health services."
49. Please provide qualifications for a non-licensed staff.

C. Standard Funding Questions

The following questions are being asked and should be answered in relation to all payments made to all providers reimbursed pursuant to a methodology described in Attachment 4.19-B of this SPA. For SPAs that provide for changes to payments for clinic or outpatient hospital services or for enhanced or supplemental payments to physician or other practitioners, the questions must be answered for all payments made under the State plan for such service.

1. Section 1903(a)(1) of the Act provides that Federal matching funds are only available for expenditures made by States for services under the approved State plan. Do providers retain all of the Medicaid payments including the Federal and State share (includes normal per diem, supplemental, enhanced payments, other) or is any portion of the payments returned to the State, local governmental entity, or any other intermediary organization? If providers are required to return any portion of payments, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the payments, a complete listing of providers that return a portion of their payments, the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the State (i.e., general fund, medical services account, etc.)
2. Section 1902(a)(2) of the Act provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the State share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the State share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), CPEs, provider taxes, or any other mechanism used by the State to provide State share. Note that, if the appropriation is not to the Medicaid agency, the source of the State share would necessarily be derived through either through an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-federal shares is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the State agency receives the transferred amounts from the local governmental entity transferring the funds. If CPEs are used, please describe the methodology used by the State to verify that the total expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b). For any payment funded by CPEs or IGTs, please provide the following:
 - (i) a complete list of the names of entities transferring or certifying funds;
 - (ii) the operational nature of the entity (State, county, city, other);
 - (iii) the total amounts transferred or certified by each entity;
 - (iv) clarify whether the certifying or transferring entity has general taxing authority; and,
 - (v) whether the certifying or transferring entity received appropriations (identify level of appropriations).

3. Section 1902(a)(30) of the Act requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) of the Act provides for Federal financial participation to States for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.
4. For clinic or outpatient hospital services please provide a detailed description of the methodology used by the State to estimate the upper payment limit for each class of providers (State owned or operated, non-State government owned or operated, and privately owned or operated).
5. Does any public provider receive payments that in the aggregate (normal per diem, supplemental, enhanced, other) exceed their reasonable costs of providing services? If payments exceed the cost of services, do you recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report?

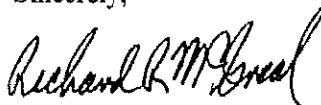
In accordance with the State Medicaid Director letter dated January 2, 2001, we request that you provide a formal response to this RAI no later than March 22, 2010. If you do not provide us with a formal response by that date, we will conclude that the State has not established that this proposed SPA is consistent with all statutory and regulatory requirements. Thus, we will have no alternative but to initiate disapproval action.

In addition, because this amendment was submitted after January 2, 2001, and is effective on or after January 1, 2001, please be advised that we will continue to defer FFP for State payments made in accordance with this amendment until it is approved. Upon approval, FFP will be available for the period beginning with the effective date of actual approval.

This RAI is made pursuant to §1915(f)(2) of the Act. This section requires action on a SPA within 90 days unless we request additional information necessary to make a final determination. A second 90-day period will begin when we receive your response to this request.

Please contact Kathryn Holt at 617/565-1246 or via email at kathryn.holt@cms.hhs.gov if you have any questions.

Sincerely,



Richard R. McGreal
Associate Regional Administrator

Enclosure

cc: Tony Marple