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

CMS

CENTERS for MEDICARE & MEDICAID SERVICES

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. 10-015 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 10-015, 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 rehabilitative services. You requested an effective date of September 1, 2010.

We have reviewed the State's responses to our informal comments and questions, and have developed follow-up questions based on those responses. Below you will find our questions and comments regarding this SPA. Please note that some of these comments and questions refer to the questions and responses provided during the informal process.

General Questions

1. As submitted, the SPA currently is paginated as "Supplement 1 to Attachment 3.1-A Page 10" for all pages; this is incorrect and confusing.
 - a. We suggest paginating this SPA as "Supplement 1 to Attachment 3.1-A Page 10(a)," Supplement 1 to Attachment 3.1-A Page 10(b)," "Supplement 1 to Attachment 3.1-A Page 10(c)," etc.
2. Please note that there is an error in the numeration of services:
 - b. Item 13d(7) and Item 13d(8) are missing; the SPA currently goes from Item 13d(6) to Item 13d(9).
 - c. Please renumber as necessary.
3. Please add the heading, "Rehabilitative Services (cont'd.)" on the top of each of the additional pages that include rehabilitative services

Coverage Questions and Comments

A. Services to Persons With Brain Injuries

1. The State has changed the component services for persons with brain injuries from what was in the originally submitted SPA. Please confirm that the State's rehabilitative services for persons with brain injuries do not include therapeutic recreation, occupational therapy, physical therapy, and speech language pathology.
2. In the State plan, please repeat the name of each of the services in the paragraph describing each of the services.
 - a. For example, replace "Integrated treatment" with "Intensive Integrated Neurorehabilitation".
3. We do not fully understand the service descriptions.
 - a. The State alludes to "interventions" within each service description. Please include in the State plan, within each description of the services, the interventions for each of the listed services of: "Intensive Integrated Neurorehabilitation", "Neuro-behavioral Rehabilitation", "Self Care/Home Management Reintegration", and "Community/Work Reintegration".
4. What is "Care Coordination"?
 - a. If it is a service that overlays each of the brain injury services, then please add it as a separate brain injury service in the State plan, along with a service description, the practitioners who furnish it and the practitioner qualifications.
5. Please explain how each of the practitioners that the State listed in the State plan can furnish each of the listed services.
 - a. For example, we are familiar with a physical therapist furnishing physical therapy, but we are not familiar with how "Intensive Integrated Neurorehabilitation", "Neuro-behavioral Rehabilitation", "Self Care/Home Management Reintegration", and "Community/Work Reintegration" are within the scope of services furnished by a physical therapist.
6. It is our understanding that brain injury services include: "Clinical Assessment", "Intensive Integrated Neurorehabilitation", "Neuro-behavioral Rehabilitation", "Self Care/Home Management Reintegration", and "Community/Work Reintegration". Yet the State has also included the following language in the State plan, "Services include treatment to correct physical and mental impairments as a result of the brain injury, and include assessment, treatment in one of the disciplines detailed above, and collateral contacts, as included in the member's treatment plan."
 - a. If there are additional services that are considered brain injury services such as physical therapy, occupational therapy, speech language pathology, recreational therapy, social work, counseling, or collateral contacts, please add them separately to the State plan, along with a brief description of the services, the practitioners who furnish them, and the practitioner qualifications.
7. The practitioners and the practitioner qualifications are unclear.
 - a. After each service, please list the practitioners that furnish each of the services.
 - b. In a separate section, please describe the practitioner qualifications. The State may briefly summarize the qualifications for each of the practitioners including any required education, training, experience, licensure, certification or registration. It is not necessary to detail how the practitioner will deliver the services.

- c. For the therapies, please indicate that the therapies and the therapists, or those working under the direction of the therapists, meet the requirements of 42 CFR 440.110.
- 8. Informal Question 4: The State did not indicate any provider "entities" that furnish brain injury services.
 - a. Please confirm that there are no provider entities that furnish brain injury services and that only practitioners who meet the qualifications listed in the State's answers may furnish brain injury services.
- 9. Informal Question 4: The State indicates that "other qualified staff" may furnish the brain injury services if they have "appropriate education, training and experience in treatment of individuals with brain injury as approved by CARF, have a satisfactory criminal background check annually, and work under documented supervision, conducted at least monthly, by the professionals defined above.
 - a. Can the State please summarize the CARF approved education, training and experience in the State plan?
- 10. Informal Question 7: The State's answer indicates that the brain injury services are for children and adults.
 - a. Please add to the State plan an assurance that the State offers comparable services to the brain injury services to all children aged 0 to 21 within the EPSDT population.

B. Rehabilitative and Community Support Services for Children with Cognitive Impairment and Functional Limitations

- 1. Informal Question 4: The State's answer indicates that "Specialized Services for Children with Cognitive Impairments and Functional Limitations" include "evidence based treatment services".
 - a. Please list and describe each evidence based treatment service in the State plan.
- 2. Informal Question 5: The State's answer references its answer to question 6 and "the OT, PT and Speech SPA's".
 - a. If the State's answer is indicating that Occupational Therapists, Physical Therapists and Speech Therapists furnish "Rehabilitative and Community Support Services for Children with Cognitive Impairment and Functional Limitations", then please list them as practitioners in the State plan and include their practitioner qualifications in the rehabilitative services section.
 - b. If their qualifications are delineated elsewhere in the State plan, please cross-reference the section and the page of the State plan where they can be found and place the cross-reference in the State plan.
- 3. Informal Question 5: The State's answer is incomplete.
 - a. Please list in the State plan the provider entities that furnish or employ/contract with practitioners to furnish "Rehabilitative and Community Support Services for Children with Cognitive Impairment and Functional Limitations".
 - b. Please also list in the State plan the State's requirements for them to be considered qualified providers of these services.
- 4. Informal Question 6: Throughout the descriptions of the practitioner qualifications, the State alludes to its "rule" governing the practitioners.
 - a. Please delete these references from the State plan pages.

5. Informal Question 6: The State indicates that direct care staff and BHPs with Specialized Services Endorsements must work under supervision.
 - a. Please explain how the State claims for supervision of these practitioners.
6. Informal Question 6: The State's answer indicates that BHPs must have a "certification within one year of hire".
 - a. Please summarize in the State plan the certification requirements that BHPs must undergo to be deemed qualified to furnish the service.
7. Informal Question 6: The State indicates that the supervisors of direct care staff must have a bachelor's degree or masters degree in a "human services or related field" or "related experience."
 - a. Please specify in the State plan what the State considers to be acceptable "human services or related fields" and "related experience."
8. Informal Question 6: The State indicates that a BHP providing "specialized services" must meet the delineated requirements. By its reference to "specialized services" is the State indicating that the delineated qualifications are required solely of those BHPs furnishing "Specialized Services for Children with Cognitive Impairments and Functional Limitations"?
9. Informal Question 6: Under item C.2.c of page 10 of Supplement 1 to Attachment 3.1-A, the State indicates that the BHP must "be able to apply, under the direction of a supervisor, an array of procedures specific to Specialized Services."
 - a. Please specify in the State plan the reference to "an array of procedures."

C. Environmental Investigations in Cases of Confirmed Lead Poisoning in a Child

10. Informal Question 8: The State's answer is unclear.
 - a. Please clarify if the State intends to delete this service from the State plan, or if the State is amending this service to allow Medicaid reimbursement only for lead investigation in the child's home. If the State is amending this section, please include the amended language in the State plan.

D. Residential Services

11. Informal Question 10: Please include language in the State plan that these services are for both children and adults.
12. Informal Question 11: The State's answer is incomplete. In some instances, the State indicated the type of facility licensure, and in other instances, it did not. The State also failed to provide the number of beds in each of the residential facilities and to describe the qualifications that the residential facilities must meet in order to furnish rehabilitative services.
13. Informal Question 12: We think the State has misconstrued the question. State plans must delineate the coverable rehabilitative services. References to "full range of formal treatment services", "rehabilitative services", "treatment and rehabilitative services" are insufficient.
 - a. Please specify in the State plan the rehabilitative services that are furnished in each residential facility. Furthermore, personal care services cannot be claimed under rehabilitative services. Please move PCS to the appropriate section of the State plan if the State intends to cover them in these facilities.

14. Informal Question 13: We think the State has misconstrued the question. This question was asking for a listing of the provider entities and practitioners that furnish each of the rehabilitative services (that the State will delineate in answer to question 13).
15. Informal Question 14: We think the State's answer is incomplete. For the provider entities, please see question 12 of this section. For the practitioners, the State needs to summarize in the State plan the State's requirements for education, training, experience, licensure, registration and certification that makes the practitioners qualified to furnish the rehabilitative services in question.
16. Informal Question 15: We will revisit the IMD question, after the State furnishes the answer to question 12 of this section.

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) 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) 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, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the State to provide State share. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-federal share 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 government 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);

- (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) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for Federal financial participation (FFP) 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?

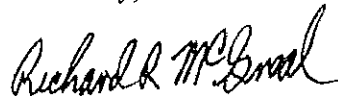
In accordance with the State Medicaid Director letter dated January 2, 2001, we request that you provide a formal response to this request for additional information (RAI) no later than March 22, 2010. If you do not provide us with a formal response by that date, we will conclude that the State has not 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.

Should you have questions, please contact Kathryn Holt at 617/565-1246 or via email at kathryn.holt@cms.hhs.gov.

Sincerely,



Richard R. McGreal
Associate Regional Administrator

cc: Tony Marple, Director, Office of MaineCare Services