



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Region 10
2201 Sixth Avenue, MS/RX 43
Seattle, Washington 98121

MAR 01 2011

Susan Dreyfus, Secretary
Department of Social and Health Services
Post Office Box 45010
Olympia, Washington 98504-5010

Dear Ms. Dreyfus:

This letter is being sent as a companion to the Centers for Medicare & Medicaid Services (CMS) approval of Washington's State Plan Amendment (SPA) Transmittal Number 10-010, which was submitted as a response to a corrective action plan (CAP) for issues found during the review of Washington SPA 09-027. These issues have now been clarified and/or corrected. However, during the review of Washington SPA 10-010, CMS performed a program analysis of Behavior Rehabilitative Services (BRS), Alcohol/Drug Screening and Brief Intervention, Alcohol and Drug Detoxification Services, and Chemical Dependency Treatment services. This analysis revealed issues that will require additional information and revision through another CAP.

Regulations at 42 CFR 430.10 require that the State plan be a comprehensive written statement describing the nature and scope of the State's Medicaid program and that it contain all information necessary for CMS to determine whether the plan can be approved to serve as the basis for Federal Financial Participation (FFP) in the State program.

To that end, CMS welcomes the opportunity to work with you and your staff to discuss options for resolving the concerns outlined below:

1. Regulations at 42 CFR 440.130(d) specify that "Rehabilitative services, except as otherwise provided under this subpart, includes any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level." Please provide a confirmation to CMS that Medicaid is not being billed for any of the Medicaid BRS activities/services which foster parents may furnish. In addition, please provide confirmation to CMS that the BRS agency is billing only for the BRS services furnished by the "Medicaid-credentialed" practitioners, such as training of the foster parents.
2. Regulations at 42 CFR 431.51(b)(1) require States to assure that recipients may obtain Medicaid services from any institution, agency, pharmacy, person, or organization that is qualified and willing to furnish those services. It is unclear from the information

provided to CMS whether beneficiary free choice of provider is afforded to the children who receive BRS. If a child is in the legal custody of the State, the State indicated that the State selects the BRS agency provider for the child. If a child is in the legal custody of his/her parents, the State indicated that the parent selects the BRS agency provider. Please provide a confirmation to CMS that all children receiving BRS services are afforded freedom of choice. In addition, please respond to the following:

- a. For children in both instances (in legal custody of the State or the parents), can the child select from among the group homes operated by the BRS agency provider?
 - b. For children in the custody of the State, can a different practitioner other than someone employed by the BRS provider be selected after a child is in the group home?
3. Please confirm that under "milieu therapy," the BRS agency is not billing for the time that staff is demonstrating a recreational or work activity.
 4. The State references "case management" in the State plan, which is not coverable under the rehabilitative services benefit. While similar to case management, "care coordination" of a rehabilitative service is limited to referral, monitoring and follow-up activities related only to mental health-related services the beneficiary may need. Please revise the Medicaid State plan to either remove "case management" and "case management staff," or to change the wording to "care coordination" and "care coordination staff," and provide sufficient description to assure that the service being provided includes only those activities allowed under "care coordination."
 5. The State includes "health care services" as a component of BRS in the State plan. The State defines health care services as: "emergency care; routine health care; health maintenance and disease prevention services such as education for the child regarding nutrition, hygiene, pregnancy prevention, and prevention of sexually transmitted infections; substance abuse assessment, education, treatment and relapse prevention; and nursing services." Please respond to the following:
 - a. The State must provide sufficient information to clarify whether the BRS provider is arranging for the provision of "health care services" from community providers, or the BRS practitioners are directly providing these "health care services;"
 - b. Emergency care; routine health care; health maintenance and disease prevention services such as education for the child regarding nutrition, hygiene, pregnancy prevention, and prevention of sexually transmitted infections; and nursing services are included under other State plan service categories. As such, they may not be billed under rehabilitative services. Please provide a confirmation to CMS that the services listed above are not being billed to Medicaid as rehabilitative services, but are billed to Medicaid under their appropriate State plan categories.

Page 3 - Susan Dreyfus, Secretary

6. The State may add “substance abuse assessment, education, treatment and relapse prevention” as a component of BRS in the State plan. However, the State plan must be revised to include specific information about the practitioners who furnish these services and their qualifications.

The State has 90 days from the date of this letter, to address the issues described above. Within that period the State may submit SPAs to address the inconsistencies or submit a CAP describing in detail how the State will resolve the issues identified above in a timely manner. Failure to respond will result in the initiation of a formal compliance process. During the 90 days, CMS will provide any required technical assistance.

If you have any questions concerning this letter, please contact me, or have your staff contact Gilson DaSilva at (206) 615-2065 or gilson.dasilva@cms.hhs.gov.

Sincerely,

Barbara K. Richards
Associate Regional Administrator
Division of Medicaid and Children’s Health
Operations

cc:

Douglas Porter, Administrator, State Medicaid Director
Ann Myers, WA’s State Plan Coordinator