

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
San Francisco Regional Office  
90 Seventh Street, Suite 5-300 (5W)  
San Francisco, CA 94103-6706



**DIVISION OF MEDICAID & CHILDREN'S HEALTH OPERATIONS**

---

JAN 23 2013

Toby Douglas, Director  
California Department of Health Care Services  
1501 Capitol Avenue  
P.O. Box 997413, MS 0000  
Sacramento, CA 95899-7413

Dear Mr. Douglas:

This letter is being sent as a companion to our approval of California State Plan Amendment (SPA) 11-017. CMS conducted a same page coverage review of chiropractic services. The pages reviewed were:

- Limitations to Attachment 3.1-A, page 11
- Limitations to Attachment 3.1-B, page 11

We have determined that the state will need to make some updates to the pages listed above in order to remove the following optional benefit exclusion language:

3. "Individual who is receiving long term care in a licensed skilled or intermediate care facility (NF-A and NF-B). Services would be provided in an FQHC or a RHC if a NF-A or NF-B resident is a patient of the clinic."
4. "Individual who is receiving care in a licensed intermediate care facility for the developmentally disabled (ICF-DD) including ICF-DD Habilitative and ICF-DD Nursing."

The above-referenced language is not appropriate, as it violates the comparability requirements at 42 CFR 440.240 and 1902(a)(10)(B). The State Plan must provide that covered state plan services be available in equal amount, duration and scope to all beneficiaries in the categorically needy group requiring the services and not be less in amount, duration and scope than the services available to medically needy recipients. Once a state decides what to cover in the State Plan and the extent to which it covers selected services, the services must be made available (i.e., comparable, in equal amount, duration and scope) to individuals in the categorically needy group, and to covered medically needy groups. This means that adults in NFs and ICFs cannot be eligible for state plan services that are otherwise not available to adults in the community. Therefore, the exception language should be removed from the above-referenced pages.

CMS agrees that NF or ICF residents may be furnished a particular type of care that is not on its own a covered state plan benefit, if that care is provided under the long term care (LTC) benefit (Item 4a and/or Item 15 in Attachment 3.1-A and 3.1-B). NFs and ICFs are responsible for providing/arranging for all medically necessary services needed by the resident. When the types of care needed cannot be arranged using state plan services,

those types of care would only be covered and reimbursable as part of the LTC benefit. Therefore, the types of care eliminated from optional state plan services should be added to the long term care coverage limitation pages to clarify that these types of care will be provided under the LTC benefit.

The State should note that while the above pages were the only pages reviewed as a part of this SPA, the same language appears under several other service categories in the State Plan; these pages will also need to be updated at a future date.

Please respond to this letter no later than 90 days from the date of this letter with a corrective action plan describing how the State will resolve the issues identified above. Failure to respond timely will result in our initiation of the formal compliance process. During the 90 days, we are willing to provide any required technical assistance. If you have any questions, please contact Kristin Dillon at 415-744-3579 or via email at [kristin.dillon@cms.hhs.gov](mailto:kristin.dillon@cms.hhs.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Gloria Nagle".

Gloria Nagle, Ph.D., MPA  
Associate Regional Administrator  
Division of Medicaid & Children's Health Operations

cc: Kathryn Waje, California Department of Health Care Services  
Laurie Weaver, California Department of Health Care Services  
Pilar Williams, California Department of Health Care Services