DATE: December 16, 2008

PPL No. 08-006

TO: Local Governmental Agency (LGA) Coordinators for Targeted Case Management (TCM)

SUBJECT: Certified Public Expenditure (CPE) Requirements for Federal Financial Participation (FFP) for TCM

This Policy and Procedure Letter (PPL) clarifies existing requirements for federal claiming for TCM services.

This PPL clarifies CPE requirements that have been in effect for many years. This PPL also supersedes PPL 05-005, and PPLs 98-004 and 98-023 as those PPLs relate to TCM CPE requirements. To the extent that PPL 98-004 and 98-023 are inconsistent with the general requirements for CPEs outlined in the “General Overview” section, below, PPLs 98-004 and 98-023 are no longer operative for any purposes. Although the general requirements for the use of CPEs in the Medi-Cal Administrative Activities (MAA) and TCM programs are the same, the Department of Health Care Services (DHCS) is planning to issue a separate PPL for MAA to reflect differences in the ways that these programs operate.

DHCS supported Assembly Bill (AB) 2527 (2008) that amends Sections 14132.44 and 14132.47 of the Welfare and Institutions (W&I) Code to clarify a number of the provisions in these sections that govern the MAA and TCM programs. However, these amendments do not become effective until January 1, 2009, and, accordingly, this PPL is based on State law that is in effect prior to January 1, 2009. After that date, provisions of this PPL will be superseded by the provisions of AB 2527 to the extent that this PPL is inconsistent with the provisions of that bill.

Background

In 2003, auditors from the federal Centers for Medicare & Medicaid Services (CMS) found that “some of the counties participating in TCM may be using private funds as the State’s share of the payments” (letter to the State dated November 17, 2003). This finding refers to claims for TCM services from LGAs that contract with private community-based organizations (CBOs) where the expenditure certified by the LGA was made by the CBO and not by the LGA. Because of this audit finding, CMS has
deferred over $35 million in reimbursements for TCM. If CMS ultimately disallows these claims, DHCS would be required to recoup these overpayments from the LGAs in question.

In January 2007, CMS issued a Notice of Proposed Rule Making (NPRM) regarding CPEs. The final regulations were issued on May 29, 2007; however, a Congressional moratorium is in effect until April 1, 2009. (Public Law No. 110-252.) Thus, the new regulations are not currently in effect and are not referenced in this PPL.

**General Overview of CPE Requirements**

The following overview of CPE requirements is provided to give LGAs a clear understanding of the general requirements that are applicable to the TCM program.

Section 1903(a) of Title XIX of the Social Security Act provides, in part, that the Federal Government shall pay to the State a percentage “of the total amount expended” for providing medical assistance (which includes TCM services). This percentage is referred to as the Federal Medical Assistance Percentage (FMAP).

Section 433.51 of title 42 of the Code of Federal Regulations (C.F.R.) provides that the amount expended must be “...certified by the contributing public agency as representing expenditures eligible for FFP under this section.”

Pursuant to section 1903(a), cited above, Medicaid is a “reimbursement” program. It is not a “matching” or “grant” program. This means that federal claiming by a state is based on actual expenditures that have been made by the state or by another public agency authorized to certify expenditures to the State for Medicaid services. Based on the state’s claim, federal reimbursement is then provided to the State. It is improper and insufficient for a public entity to certify expenditures that have not yet been made, for example, where the certification is based, in whole or in part, on an invoice or other billing that has not yet been paid. FFP is reimbursement for expenditures that have been made and DHCS is required to certify that those expenditures have actually been made before it can claim FFP.

Thus, the only amount that can be certified (the CPE) is the actual Medicaid expenditures that have been made by the public agency for which all supporting

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2 For purposes of the TCM program, LGAs are counties and chartered cities. (See Welf. & Inst. Code § 14132.44, subd. (o).)
3 42 U.S.C. § 1396b(a).
documentation is available at the time the claim is made by the state. Federal reimbursement with respect to the expenditure certified is paid to the state in accordance with the appropriate FMAP rate. For example, in a state with a 50 percent FMAP rate, if the amount certified is $100, then the claim would be for $50 in FFP (.50 x 100).

Applying current CMS policy, the situations below are not in compliance with current federal regulations governing CPEs. These situations can be summarized as follows:

1. A certification that funds are available at a State or local level. The “availability” of funds does not meet the federal requirement that State or local dollars have actually been expended to provide covered health care services to eligible Medicaid recipients.

2. A certification based on an estimate of Medicaid costs derived from surveys of health care providers. An estimate does not meet federal requirements that State or local dollars have actually been expended to provide health care services to Medicaid individuals.

3. A certification that is higher than the actual cost or expenditure of the governmental unit that has generated the CPE (based on its provision of, or payment for, services to Medicaid recipients).

4. A certification that is anything less than 100 percent of the total-funds (total computable) expenditure. Federal reimbursement is available only as a percentage of the total-funds (total computable) Medicaid expenditure that has been certified. For example, a certification that certifies only the amount of the non-federal share of the total-funds expenditure is not acceptable.

**CPE Requirements as Applied to LGAs**

This PPL describes the only two situations in which a public agency can certify an expenditure: (1) The public agency is the provider of the service, or (2) the public agency has paid other providers for the services. Each of these situations is discussed below.
(1) The Public Agency is the Provider

If the public agency is itself the health care provider, then it may certify its own costs (subject to applicable payment limitations). If this is the case, the public agency may certify the costs that it actually incurred in providing covered services to Medi-Cal beneficiaries. LGAs, being counties and chartered cities, are public agencies and are authorized by state and federal law to certify their expenditures.

Accordingly, LGAs may certify their actual costs incurred in providing TCM services to Medi-Cal beneficiaries. DHCS then uses the LGA's certification to claim FFP from CMS. CMS then provides federal reimbursement to DHCS at the FMAP rate for California (currently 50 percent).

(2) The Public Agency Contracts with Providers

Under existing state law, LGAs are authorized to contract only with a nongovernmental entity or the University of California, or both, to provide TCM services on its behalf. (W&I Code § 14132.44, subd. (c).) As noted above, on January 1, 2009, AB 2527 will become effective, amending Sections 14132.44 and 14132.47 of the Welfare and Institutions Code to expand the entities with which an LGA could contract. On that date, provisions of AB 2527 will take precedence over any inconsistent provision in this PPL.

If a public agency has paid for covered Medicaid services furnished by a CBO (or other private entity), that public agency can certify the actual expenditures it has made. (W&I Code §14132.44, subd. (e).) The amount that is paid must be in compliance with any payment limitations set forth in State law, in the Medicaid State Plan, in the provisions of a federal waiver or demonstration, or in a contract between DHCS and the LGA, as may be applicable. The certification must reflect the payment by the public agency to the contracted provider for TCM services provided to Medi-Cal beneficiaries. An LGA may only certify its total-funds expenditures for TCM provided by private CBOs in the amount the LGA has actually paid the CBOs for Medi-Cal TCM services, and that the CBOs can appropriately document as having been provided.

Further, expenditures made directly to a CBO by State or other local agencies may not be certified by an LGA for the purpose of claiming FFP. LGAs may only certify expenditures that they have actually made, not expenditures that others have made.

It also should be noted that federal grants to LGAs that must be expended for TCM services cannot be claimed by LGAs as their expenditures because federal
reimbursement under Medicaid is not available for expenditures made using other federal funds, unless expressly authorized in federal law.

Certification by Other State Agencies (and Related Local Entities)

It has been questioned whether, under state law, organizations such as local Proposition 10 Commissions (county First 5 Commissions) and Area Agencies on Aging (AAAs) are also authorized to provide funding for TCM services and certify their expenditures for those services to DHCS.

Pursuant to state law, County Proposition 10 Commissions that participate in the California Children and Families Program (First 5 California) may be established as either a legal entity separate from the county or, as an agency of the county, with independent authority over the county’s strategic plan and the local trust fund. (See Health & Saf. Code §§130140 and 130140.1.) Similarly, AAAs may be established as a part of the county (or counties) or as some other type of agency or organization.4

It is without question that a county (as an LGA) may certify expenditures made by the county First 5 Commissions that are established as agencies of the county. County First 5 Commissions that are established as legal entities separate from the county would normally qualify as “public agencies” eligible to certify their expenditures under current federal law and regulations. However, even if they qualify as “public agencies” under federal law, they are not currently authorized under State law to certify TCM services directly to DHCS. Under current state law, the only public agencies that can directly certify their expenditures for TCM are LGAs (counties and chartered cities).5

To the extent that a county (LGA) provides funding to a First 5 Commission, the LGA may certify that expenditure. DHCS understands that county First 5 Commissions that were established as legal entities separate from the county were established as such by a decision of the county Board of Supervisors for administrative purposes, but that the Proposition 10 tax revenues, allocated to the county pursuant to Health and Safety Code Sections 130105 and 130140, are considered county funds. As long as a county First 5 Commission is administering funds that are county funds, and expenditures of those funds for TCM services is certified by the LGA, DHCS may claim federal reimbursement.

42 U.S.C. 3025(c); California Code of Regulations title 22, section 7206.

5 As noted above, these provisions have been amended in AB 2527, but the amendments are not in effect until January 1, 2009. After that date, the provisions of AB 2527 will take precedence over the provisions of this PPL.
In the case of the TCM/Linkages program, some of the AAAs are private and some are public (part of the county), but they all receive their funding from California Department of Aging (CDA). The county, as a public agency, can certify the expenditures made by AAAs that are part of the county (or that otherwise could be classified as public agencies), but the private AAAs are not public agencies and therefore, in most cases, cannot certify directly to DHCS. However, because CDA is a governmental entity, it can certify the funding that it has provided to the private AAAs. In this situation, however, LGA Coordinators the AAA would need to appropriately verify and document that the funds were expended for providing covered TCM services to Medi-Cal beneficiaries. Based on the CDA certification taken together with the required documentation as to how the funds were used, DHCS may claim federal reimbursement.

Therefore, it is essential to ascertain the nature of each entity established in a county (or counties) in order to confirm to what extent the LGA, a First 5 Commission, or AAA may certify TCM expenditures. DHCS invites county staff and other interested parties to contact DHCS to discuss specific situations. DHCS staff is also available to discuss the mechanism to obtain certifications from other State agencies, and to submit them with the claim or to maintain them in the audit file.

**Required Documentation of Certified Public Expenditures**

Federal guidance and the State law that implements CPE programs require that the public agency using the CPE process submit a certification to the State attesting that the total-funds (total computable) amount of its claimed expenditures are eligible for FFP, in accordance with the Medicaid State Plan and the provisions of Section 433.51 (quoted at page 2, above). That certification must be submitted to DHCS, and would be used as the basis for DHCS to claim FFP within two years from the date of the expenditure. As noted above, DHCS staff is available to discuss specific situations.

CPEs must be supported by auditable documentation that identifies the relevant category of expenditure under the State plan, and demonstrates the actual expenditures incurred by the LGA in providing services to Medicaid beneficiaries.

LGAs should also include and identify expenditures for TCM in their general ledgers (including those paid to CBOs), spend a specific amount for those services, certify that the expenditures were made to provide TCM to Medi-Cal beneficiaries, and submit invoices and other supporting documentation to DHCS that the services were provided. Such payments should also be supported by the CBO’s TCM contract with the LGA.
invoices from the CBO to the LGA requesting payment, and warrants/remittance advices from the LGA that specify the payment was for TCM services. CMS’s current guidance emphasizes the importance of such documentation.

**Examples of Unacceptable Claims**

The following example, with several variations, is provided to clarify what will not be permitted by DHCS, based on federal law and policy.

An LGA submits an invoice to DHCS on which it has certified a total-funds expenditure of $100 for TCM provided to clients of its contracted CBO. The LGA expects DHCS to reimburse it at the FMAP rate of 50 percent, or $50. However, after DHCS reviews the LGA’s supporting documentation, DHCS determines that the LGA:

1. **Has paid the CBO only $80.** Even though the CBO’s costs were actually $100, as stated on the invoice, DHCS will only reimburse the LGA based on the amount spent by the LGA. Because the LGA paid the CBO $80, DHCS may provide the LGA with $40 in FFP, and not $50. If an LGA does not pay a CBO, the LGA may not submit invoices to DHCS for work the CBO has performed.

2. **Does not have supporting documentation** to demonstrate that it made an expenditure to its CBO specifically for the provision of TCM services. DHCS will not reimburse the LGA the federal share of the invoice because all payments for Medi-Cal services must be supported by adequate documentation (e.g., LGA warrants to the CBO and remittance advices that specify the amount shown on the TCM invoice submitted to DHCS, or specify the portion of the LGA payment to the CBO that was for the provision of TCM services). For example, an LGA’s payments to its CBO(s) for TCM services could be identified as such in the LGA’s general ledger or documented pursuant to an agreement between the LGA and the CBO.

3. **Based its certification solely on payments made directly to the CBO by other State agencies.** DHCS will not claim FFP or pay the LGA for this invoice because it does not reflect LGA expenditures; therefore, the LGA has no basis on which to certify that it has made an expenditure. Even though the CBO used State funds for the provision of TCM services, the LGA cannot certify as its own, a total-funds expenditure that was expended by another entity.

4. **Based its certification on expenditures made by another State or local agency within its geographical region,** such as State departments, Proposition 10
Commissions, and non-chartered cities. DHCS cannot claim federal reimbursement based on an LGA’s certification when the LGA did not itself make the expenditure. Nothing, however, would prevent an LGA from collecting certification and expenditure detail from other entities, and submitting this information to DHCS.

Conclusion

This PPL clarifies CPE requirements that have been in effect for many years. In summary, as applied to LGAs, CMS requires that an LGA must first incur its own total-funds expenditure before it may certify that amount to DHCS for federal claiming. DHCS cannot claim FFP based on a certification from an LGA that does not meet this threshold requirement.

If you have questions regarding this PPL and the requirements for claiming for TCM, please contact Ms. Elizabeth Touhey, Chief, Administrative Claiming Local and Schools Services Branch, at (916) 552-9113 or elizabeth.touhey@dhcs.ca.gov.

Sincerely,

ORIGINAL SIGNED BY STAN ROSENSTEIN

Stan Rosenstein
Chief Deputy Director
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