Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850

Center for Medicaid and State Operations
Disabled and Elderly Health Programs Group
Division of Integrated Health Systems

April 26, 2005

Stan Rosenstein, Deputy Director
Medical Services
Department of Health Services
1501 Capitol Avenue, Suite 71.6086
P.O. Box 997413
Sacramento, CA 95899-7413

RE: CA-17.R04

Dear Mr. Rosenstein:

We are pleased to inform you that the Centers for Medicare & Medicaid Services (CMS) is approving California's request for renewal of the Medi-Cal Specialty Mental Health Services Consolidation Waiver, authorized under 1915(b)(4) of the Social Security Act. CMS is approving the waiver renewal with an effective date of April 1, 2005, to allow for an administrative alignment that will coincide with quarterly Federal expenditure reporting requirements. Therefore, the new waiver renewal period will begin April 1, 2005, through March 31, 2007. In addition, CMS is approving programmatic changes to merge the Medi-Cal Mental Health Care Field Test (San Mateo County) and Solano County programs under this waiver program effective July 1, 2005.

The decision to approve the renewal of this waiver is based on evidence submitted to CMS demonstrating that the State's proposal is consistent with the Medicaid program and will meet all statutory and regulatory requirements for assuring beneficiaries' access to care, quality services, and will demonstrate waiver cost-effectiveness for section 1915(b) waiver programs.

The Centers for Medicare & Medicaid Services has reviewed the State's request to waive certain provisions of the Medicaid Managed Care regulation in the renewal application and has determined that the State must meet the requirements as indicated below:

Section 438.10(e)and (f)(3) – Information Requirements
The State must meet the requirements as stated in the August 22, 2003, letter from CMS. In that letter, CMS stated that the State must satisfy 3 requirements: 1) the mental health provider directory is furnished to all enrollees currently receiving mental health services; 2) the State provides all enrollees, who are enrolled in the programs but are not receiving services, with a toll-free number to request a provider directory that will be furnished upon request; and, 3) the State must comply with all other provisions of subsection 438.10(f) for all individuals enrolled in the program. The State must come into compliance with these provisions as stated in the attached terms and conditions.

Section 438.420 –Continuation of Benefits While MCO or PIHP Appeal and the State Fair Hearing are Pending
In the 2003 renewal, CMS did not waive the requirements in §438.420 for continuation of benefits, if an appeal goes through the plan and not directly to the State. Under this renewal, CMS has reviewed the State's waiver request and has determined that §438.420 does apply to both the State Fair Hearing process and the PIHP appeal process. Thus, the State must come into compliance with these requirements as stated in the attached terms and conditions.

Section 438.114(d)(1)(ii) Emergency and poststabilization services.
The State is currently compliant, but requested a waiver of § 438.114(d)(1)(ii) to allow Mental Health Plans (MHP) to deny payment for failure of a non-contractual hospital to provide notice with in 24 hours of admission. CMS is not approving the State's requests to waive this provision, which prohibits MHPs from denying reimbursement for claims submitted by an ER provider, if providers notify MHPs with in 10 business days.

Please note that approval of the State's renewal application is contingent upon the attached list of terms and conditions. The State has 30 days from the date of this letter to respond in writing as to whether the State accepts the terms and conditions as set forth in the attachment. If the State does not accept the terms and conditions, the State must submit a phase-down plan for this program.

The Centers for Medicare & Medicaid Services would like to remind the State that they will need to amend the waiver due to the implementation of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. The State will need to determine the impact on dual eligible beneficiaries enrolled in the program and how it will impact cost effectiveness, rates and contracts.

If the State decides to request an additional renewal of this program, the renewal application must be submitted by January 1, 2007, at least 90 days prior to the expiration date of this waiver but no earlier than 120 days.

We appreciate the State's efforts in continuing this program and wish you much success in the next waiver period. If you have any questions, please contact, Mary Pat Farkas in the CMS Central Office at 410-786-5731, or Jullin Kwok in the CMS San Francisco Regional Office at 415-744-3571.

Sincerely,

Theresa A. Pratt
Director

Enclosure

cc: Mary Pat Farkas, CMS CO
Jullin Kwok, CMS San Francisco RO

RESPONSE TO CENTERS FOR MEDICARE AND MEDICAID SERVICES REQUEST FOR A CORRECTIVE ACTION PLAN FOR COMPLIANCE WITH THE REQUIREMENTS OF TITLE 42, CFR, SECTION 438.10

On March 11, 2005, the Centers for Medicare and Medicaid Services (CMS), the Department of Mental Health (DMH), and the Department of Health Services (DHS) participated in a conference call to discuss the 2005 Medicaid 1915(b) Medi-Cal Specialty Mental Health Consolidation waiver renewal request. During this conference call, CMS indicated that they intended to deny the State's request for a waiver of the provisions at Title 42, CFR, Section 438.10(f)(3).

Background:

In the third waiver renewal, the State requested a waiver of Title 42, CFR, Sections 438.10(e) and (f)(3), which establishes specific requirements for the distribution of information to enrollees of Medicaid managed care plans. The State requested a waiver of subsection (e) to clarify that the fact that all beneficiaries are automatically enrolled in the program means that there are no potential enrollees. In addition, the State requested a waiver of the distribution requirements of subsection (f)(3) to permit MHPs to provide informing materials and provider lists to beneficiaries that meet the content requirements of Section 438.10 when the beneficiaries first access services through the MHP and on request. The waiver of subsection (f)(3) would apply to the distribution requirements of the subsection only, not to any other provisions of the subsection except as directly related to the issue of distribution. There are also references to these distribution requirements throughout the regulations. To the extent necessary, waivers were requested of all sections that mentioned the obligation to inform all enrollees to allow informing of all beneficiaries on request and beneficiaries who are accessing services, consistent with the conditions described in this request for a waiver of Section 438.10(f)(3).

After extensive discussion between CMS and the State, the State withdrew this waiver request and submitted a revised request for a waiver of Section 438.10(f)(3) in which there would be one-time distribution of informing materials to all Medi-Cal beneficiaries, a one-time distribution of informing materials and provider lists to all current clients of the MHPs, an ongoing distribution of informing materials to new beneficiaries, and an ongoing distribution of informing materials and provider lists to new clients and upon request. CMS approved this revised waiver request in its letter of August 22, 2003.

Subsequent to the CMS approval of the waiver request, the State reviewed the costs and benefits of the approved waiver, and the State was instructed to seek relief from CMS to allow it to implement a distribution process consistent with the waiver as it was originally requested. The intent to seek relief in this area was described in the 2004 Governor's Budget Summary and was the result of

California's severe budget crisis. As a result, the final 2004 Budget Act did not provide funding for the distribution required by the waiver program as approved by CMS.

Current Status on Development and Distribution of Informing Materials:
The State hired a contractor (MAXIMUS) to design and produce the informing materials, including a notice that will serve as the annual notice to all beneficiaries and the notice to new beneficiaries at the time they become Medi-Cal eligible, and provider lists in the first year of the contract (FY 2004-05). The contractor will handle the annual update process for the materials over the next two years (FY 2005-06 and FY 2006-07). The booklets containing all the required information and the provider lists have been developed and were provided to MHPs for distribution to new clients and upon request on March 1, 2005.

The annual/new beneficiary notice has been completed. The State is working on the distribution process, which should be **completed by June 30, 2005.**

MHPs are expected to begin distribution to new clients and upon request immediately. Once the annual notice and notice to new beneficiaries are distributed, all beneficiaries will have information telling them the name and toll-free number of their MHP, how to access services, and the kinds of information available from the MHP on request.

Plan of Correction
California will begin the process of requesting funding to implement the Section 438.10(f)(3). The current estimate of the cost which was developed in FY 2003-04 is $23.6 million total State General Funds to provide one-time distribution of informing materials to all Medi-Cal households and provider lists to all current clients of the MHPs.

Now that the actual informing materials and providers lists have been completed, the State expects to be able to develop a better estimate of the costs of the distribution under either of the two scenarios described below. Costs include printing and mailing for the booklets, which are about 80 pages, and for the provider directories, which vary in length depending on the size of the MHP, with the largest being Los Angeles, which is 976 pages in length. The booklets can be viewed at www.pcginfo.com/dmh/htm.

The State will initiate a request for funding during this FY 2005-06 state budget cycle based on the previous estimate of costs until an accurate estimate can be determined.

Tasks:

- **Task:** Hire a contractor (MAXIMUS) to design and produce the informing materials. **Status: (Task Completed as of 3-31-05).** The contractor will handle the annual update process for the materials over the next two years (FY 2005-06 and FY 2006-07).

- **Task:** Identify funds through State budget process to pay for the cost of mailing Mental Health informational materials to the entire universe of Medi-Cal households. **Estimated completion: September 2005** We continue to calculate the cost of distribution based on the count of materials, identify the number of Medi-Cal households statewide and determine current printing and postage fees.
- **Task:** Identify the appropriate mechanism for reproduction and materials distribution. (This would be accomplished through either Interagency Agreement or Request for Proposal –RFP-process). **Estimated completion: June 2005**

The actual work of mailing and distribution of informing materials will involve the need for a formalized contract. This will be accomplished through one of two mechanisms – either an Interagency Agreement with another state agency or a formalized Request for Proposal (RFP) process. The two assumptions will involve different timelines, and possibly differing costs (which are indeterminate as of this writing).

Assumption: Interagency Agreement mechanism is used and funds can be identified in the FY 2005-06 budget cycle:

- **Task:** Initiate meetings with involved agencies **Estimated completion: September 2005**
- **Task:** Develop timeline for mail out **Estimated completion: September 30, 2005**
- **Task:** Mail out of Mental Health information materials to all Medi-Cal households completed **Estimated completion: January 2006**

Assumption: Request for Proposal process is be used and funds identified in the FY 2005-06 budget cycle.

- **Task:** Write and have approved a RFP **Estimated completion: August 30, 2005**
- **Task:** Post RFP **Estimated completion: September 30, 2005**
- **Task:** Bidder's conference **Estimated completion: October 8, 2005**
- **Task:** Award RFP **Estimated completion: November 30, 2005**
- **Task:** Contractor prepares mail outs. **Estimated completion: February 2006**
- **Task:** Mail out of Mental Health information materials to all Medi-Cal households completed **Estimated completion: March 30, 2006**

Summary of Immediate Tasks

- **Task:** Request data from DHS to identify all Medi-Cal households to be sent Mental Health informational materials – **Estimated completion: August 2005**

- **Task:** Request resources in FY 2005-06 budget cycle to fund the mailing of Mental Health informational materials to all Medi-Cal households (estimated at $23.6 Million) – **Estimated completion: Upon Governor's signature by September 2005 or before.**
- **Task**: Coordinate distribution through contract as per above—either IA or RFP – **Estimated completion: March 2006**

Conclusion:

The state is committed to making every effort to come into full compliance with the requirements of CFR Section 438.10. Discussions have been undertaken with the Health and Human Services Agency and the Department of Finance to identify funding in the FY 2005-06 budget cycle. We will continue to work with partner agencies to ensure conformance with federal requirements related to the distribution of Mental Health related informational materials to the population of Medi-Cal beneficiaries.

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Kinstler, Belva (DHS-MCPD)

From: Rita McCabe [Rita.McCabe@dmh.ca.gov]
Sent: Wednesday, March 23, 2005 10:12 AM
To: Kinstler, Belva (DHS-MCPD)
Subject: here you go!

Department of Mental Health
March 21, 2005

RESPONSE TO CENTERS FOR MEDICARE AND MEDICAID SERVICES REQUEST FOR A CORRECTIVE ACTION PLAN FOR COMPLIANCE WITH THE REQUIREMENTS OF TITLE 42, CFR, SECTION 438.420(b)

On March 11, 2005, the Centers for Medicare and Medicaid Services (CMS), the Department of Mental Health (DMH), and the Department of Health Services (DHS) participated in a conference call to discuss the 2005 Medicaid 1915(b) Medi-Cal Specialty Mental Health Consolidation waiver renewal request. During this conference call, CMS indicated their position on the waiver requested by the State of the provisions at Title 42, CFR, Section 438.420(b), which provides for continuation of benefits, was to deny the waiver request. CMS requested that the State provide a corrective action plan describing how the State would come into full compliance with Title 42, Code of Federal Regulations (CFR), Section 438.420 (b) once the waiver was denied.

The State understands that CMS will be denying the State's proposal to allow beneficiaries to obtaining continuing services only if they file a timely request for a state fair hearing, rather than, as provided in the regulation, either requiring beneficiaries to file a timely request for appeal with the mental health plan (MHP) or to file a timely request for either or both an appeal to the MHP and/or a state fair hearing. The State also understands that CMS will indicate the other components of the request related to permit beneficiaries to go directly to appeal or fair hearing when their provider denies their request for a specialty mental health service without having to go through the MHP to obtain a notice of action, to providing continuing services if the MHP denies a provider's new request for payment authorization to continuing a service that had previously been approved by the MHP for a new period of time, and to prohibit the MHPs and providers from billing beneficiaries who requested continuing services during a state fair hearing and receive an adverse appeal or fair hearing decision (see the waiver renewal request, pages 17-19, for more specific information on the request).

Background:

Background on the Waiver Request

In California's third Medicaid 1915(b) waiver renewal request, the State proposed to provide continuing services (or aid paid pending (APP)) through state fair hearings in accordance with the state regulations at Title 9, California Code of Regulations (CCR), Section 1850.215, rather than using the system provided for under Title 42, CFR, Section 438.420(b).

In an August 22, 2003 follow up letter to the State's third waiver request, CMS had remained silent on California's request to waive Title 42, CFR, Section 438.420, but had indicated that

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the letter would "address the one request that has been approved, followed by others for which we have determined that waivers are not needed." The letter then addressed the informing materials waiver that was being approved, then the areas in which CMS had determined that waivers were not needed to do what the State had proposed as long as specific conditions were met. The request for a waiver of Section 438.420 was not mentioned. The State initially interpreted CMS silence on the specific request as an indication that a waiver was not needed and that there were no conditions on the request. State staff later became concerned about CMS silence on the issue and initiated an inquiry into the issue with CMS, which indicated it had not understood the State's request and had concerns. For the third waiver renewal period, California is relying on the Social Security Act provisions for approval of waiver requests at Title XIX, Section 1915(f)(2) that waiver requests are deemed approved unless CMS makes a timely denial of the request. The State, however, acknowledges CMS's authority to deny the waiver request being made in the current renewal request.

Program Background:

When the final Medicaid managed care (MMC) regulations were issued in 2002, the State reviewed the new provisions, including those related to appeals, fair hearings and APP, to determine their impact on the existing system. The State's goal for program changes was to maintain, to the extent possible, the original design of Medi-Cal Specialty Mental Health Services Consolidation program. The State expected this approach to minimize costs to the State and the counties, and to continue design features that came from an extensive public planning process and included beneficiary protections that were not required by the MMC regulations. The State concluded that its existing design affords all necessary protections and conforms with the intent of beneficiary protections envisioned in the 2000 MMC regulations, but that specific waivers might be needed to resolve technical differences between the original waiver design and the MMC regulation requirements.

The State will comply with the federal requirement if required by CMS to do so, but would advocate that CMS reconsider the position expressed during the conference call and allow the State to retain the process that has been in place for an extended period of time. The State's existing regulations provide benefits to enrollees beyond those included in the federal regulations (that is, expanded aid paid pending and protection from billing by providers and MHPs if provider payment is denied or a fair hearing involving aid paid pending is denied). A waiver of Section 438.420 is requested to continue these practices. This waiver will have no negative impact on access or quality. The waiver will also be neutral with respect to costs because the costs of these services are covered under the State plan.

Plan for Implementation of Section 438.420(b)

If the waiver request is denied, the State intends to implement a system in which beneficiaries must file timely appeals with the MHPs to obtain APP the appeal decision and, in the event of an adverse appeal decision, then file a timely request for a state fair hearing to obtain APP the fair hearing. The State will need to take the following actions to implement this system:

- Revise DMH Notice of Action (NOA) forms
  - Issue a DMH Letter to all MHPs Explaining the Change and Providing Information on How the Make APP Decisions
- Amend the DMH/MHP Contracts

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Revise Beneficiary Informing Materials
Notify the Office of State Hearings of the Change.
Provide or Arrange for Training for the MHPs.
Revise Title 9, CCR, Section 1850.215.

Initial Steps to Implementation:

Upon receipt of a formal denial of the waiver request from CMS, the State will issue a DMH Letter to MHPs directing the MHPs to make the necessary changes to their systems, requiring them to adopt practices consistent with the requirements of Section 438.420(b) within ninety days, and providing revised NOA forms. If CMS acts on the waiver renewal request on or before April 27, 2005, the change should be implemented by late July or early August 2005. These are the most critical steps in the process, since MHPs have the responsibility to handle the new appeal issues and beneficiaries will begin getting the new information about how to request APP on their NOAs. DMH believes it has the authority to implement federally required program changes in this manner and has used this authority successfully in the past.

The State will then proceed to take the following actions some of which because of their administrative burden will take longer then ninety days to complete but will bring the mental health system into full compliance:

Amendment of the FY 2005-06 DMH/MHP Contracts

DMH will need to initiate the DMH/MHP contract renewal process prior to CMS's formal decision on the waiver request. DMH will begin an amendment process once the CMS decision is received, and expects to issue the amendments on or shortly after July 1, 2005. DMH selected the July 1, 2005 date to ensure that MHPs and County Boards of Supervisors handle the contract renewals, which are critical to continuation of the program as a whole, before they handle the amendment. .The 2005 contracts are already revised and pending distribution to MHP's. This contract includes the existing requirements for the provision of aid paid pending and access to state fair hearings, which was reviewed and approved by CMS in FY 2004-05. Amendments will be drafted and issued to MHPs within ninety days of receipt of a final denial of the waiver request.

Revise Beneficiary Informing Materials

Beneficiary informing materials that comply with the content requirements of Section 438.10 were released in March 2005. DMH, through its contractor, is in the process of updating these materials for FY 2005-06. As long as CMS's decision is received as expected, the update materials will include the APP changes in the beneficiary problem resolution sections of the booklet. DMH anticipates completing the update process and distributing revised materials to MHPs effective July 1, 2005.

Notify the Department of Social Services' Office of State Hearings

The Department of Social Services (DSS) administers Medi-Cal fair hearings through its Office of State Hearings. The State will notify DSS of the change, so that they will know that requests for hearings involving APP that have not been through the MHP appeal process will need to be rejected and referred to MHPs. The State expects to provide this notice by July 1,

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2005 and will participate in any necessary meetings with DSS prior to implementation by the MHPs in late July or early August.

Provide or Arrange for Training for the MHPs

In response to concerns from the MHPs about fair hearing issues, including APP, on implementation of the modified Medi-Cal Specialty Mental Health Services Consolidation waiver program starting in 1997, DMH arranged for Administrative Law Judges (ALJs) from the Office of State Hearings to provide MHPs with training on the issue. DMH believes that a similar training will be even more important under the new system, since MHPs will no longer be able to rely on the Office of State Hearings to instruct them on the initial decision as to whether APP applies. DMH will be requesting that the Office of State Hearings assist us again. Training will take some time to organize, but should be available by October 2005.

Amendment to Title 9, CCR, Section 1850.215

DMH is in the process of adopting a revised Title 9, CCR, Division 1, Chapter 11, as emergency regulations based on authority provided in a recent revision to Welfare and Institutions Code, Section 5775(f). DMH expects these regulations to be adopted on or before April 22, 2005. Given the complexity of the State's regulation process and the timing requirements of Welfare and Institutions Code, Section 5775(f), DMH cannot delay the current process to make the change. DMH will, however, have an opportunity to make changes to the new emergency regulations in response to public comments on the regulations and should be able to incorporate the required changes related to APP. The changes, however, cannot be effective until the regulations are adopted as permanent. DMH expects that the process will be completed and the regulations adopted as permanent by December 31, 2005.

California Specialty Mental Health Waiver
1915(b) Waiver Renewal
1/29/05 Submission

Terms and Conditions

This approval is subject to all the terms and conditions listed below:

1. The State must assure adequate funding for, and must ensure that the Department of Mental Health (DMH) come into full compliance with the information requirements as specified in the CMS' August 22, 2003, letter. No later than June 30, 2005, the State will identify the appropriate mechanism for reproduction and materials distribution. No later than August 31, 2005, the State will identify a list of all Medi-Cal households that need the informing materials. No later than September 30, 2005, the State must secure adequate funding to meet the three requirements. In addition, State should provide status reports and or status updates at the monthly CMS/DHS/DMH Calls on the implementation of the informing requirement upon request.

No later than March 30, 2006, the State must come into full compliance with the three requirements as specified in the CMS' August 22, 2003, letter.

2. No later than December 31, 2005, the State must ensure that the DMH comply with 42 CFR Section 438.420(b). The following actions must be completed no later than July 31, 2005:
   a. the DMH must issue a DMH letter to Mental Health Plans (MHPs) directing the MHPs to make the necessary system changes to meet the requirements of 438.420(b).
   b. the DMH must amend contracts between MHPs to reflect the 438.420(b) requirement.
   c. the DMH must update the informing materials to include the Aid Paid Pending (APP) changes in the beneficiary problem resolution sections of the booklet.
   d. the State must notify the Department of Social Services' Office of State Hearings on the 438.420(b) requirements.

In addition, the State must provide status reports and or status updates at the monthly CMS/DHS/DMH Calls on the implementation of the requirement upon request.

No later than December 31, 2005, the State must incorporate and ensure the required changes related to Aid Paid Pending (APP) changes are adopted permanently in State regulation to fully comply with 42 CFR Section 438.420(b).

TOTAL P.04