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DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop 52-14-26  
Baltimore, Maryland 21244-1850



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

**Aug 22 2003**

Mr. Stan Rosenstein  
Director, MS 4000  
Medical Care Services  
California Department of Health Services  
1501 Capitol Avenue, Suite 6086  
Sacramento, California 94234-7320

Dear Mr. Rosenstein,

This letter is in response to the State of California's requests to waive certain provisions of the Medicaid Managed Care (MMC) Regulation regarding both its Medi-Cal Specialty Mental Health Services Consolidation Program and Medi-Cal Mental Health Care Field Test (San Mateo) 1915(b) waiver programs. We would first like to address the one request that has been approved, followed by others for which we have determined that waivers are not needed.

Your request for the Centers for Medicare & Medicaid Services (CMS) to grant a waiver of the information requirements in section 438.10(e)(f) of the MMC regulation is approved; however, the State must satisfy three requirements. This decision is based on your letter of July 9, 2003, and our conference call of July 24, 2003. The three requirements are the following: (1) that the mental health provider directory is furnished to all enrollees currently receiving mental health services; (2) that 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) that the State must comply with all other provisions of subsection 438.10(f) for all individuals enrolled in these programs.

We would also like to clarify circumstances in which the waivers requested by the State are not necessary. Based on the information you provided, we have determined that California does not need a waiver of the listed MMC requirements below.

- 42 CFR §438.10(e): The State does not need a waiver of this requirement because all Medi-Cal beneficiaries are automatically enrolled in the Medi-Cal Specialty Mental Health Services Consolidation Program. This section does not apply since there are not any potential enrollees in the program.
- 42 CFR §438.2: Since the definition of health care professional in 42 CFR §438.2 is not exhaustive the State has the authority to expand the definition to include health care professionals qualified by education and experience and licensed to practice in the State.

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- 42 CFR §438.6(c): The CMS has determined that this section does not apply to your mental health programs, given the existing reimbursement and FFP-claiming arrangement between the State and the counties that operate both programs.
- 42 CFR §438.52 and §438.56: The program meets the criteria set forth in the preamble of the MMC Final Rule published on June 14, 2002, for approving waivers of the choice requirement for PIHPs. As interpreted on page 41020 of the MMC Final Rule, "CMS can grant States a waiver to operate a program with a single PIHP or PAHP, in a rural or non-rural area." A waiver of the choice requirement conversely implies that of disenrollment since both go hand in hand.

We provided clarification on the following two regulatory sections and as a result of the discussion between the State and CMS on August 12, 2003, waivers are not needed because:

- 42 CFR §438.114: The CMS has agreed that the State may include in their contract additional criteria for purposes of determining an emergency condition as long as such criteria is in addition to the Federal definition and does not impose limitations on the Federal definition. Since the State has agreed to include the Federal prudent lay-person definition for emergency conditions in their mental health program contract without limiting it by the State specific criteria, we have determined a waiver of this provision is not needed.
- 42 CFR §438.400: Based on our clarification on what constitutes a denial of payment and what actions require notice, the State has agreed to include language in the contracts that will require notice when denial of payment is made after a service has been delivered to a beneficiary.

We appreciate the State's efforts in working toward full compliance with the Medicaid Managed Care Regulation.

Sincerely,



Theresa A. Pratt  
Director

cc:  
Linda Minamoto, Region IX.  
Peggy Clark, Central Office.  
Ed Hutton, Central Office.  
Barbie Robinson, Central Office.