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State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

DATE: May 19, 2020

Behavioral Health Information Notice No.: 20-018
(Supersedes [MHSUDS IN 19-007](#))

TO: California Alliance of Child and Family Services
California Association for Alcohol/Drug Educators
California Association of Alcohol & Drug Program Executives, Inc.
California Association of DUI Treatment Programs
California Consortium of Addiction Programs and Professionals
California Council of Community Behavioral Health Agencies
California Opioid Maintenance Providers
California State Association of Counties
Coalition of Alcohol and Drug Associations
County Behavioral Health Directors
County Behavioral Health Directors Association of California
County Drug & Alcohol Administrators

SUBJECT: Specialty Mental Health Services and Mental Health Services Act funding for County Probation and Jail, Parole, and Post-Release Community Supervision Populations, updated due to Senate Bill (SB) 389

PURPOSE: This Department of Health Care Services (DHCS) Behavioral Health Information Notice (IN) provides guidance and clarification to Mental Health Plans (MHPs) and county mental health departments about their responsibility regarding Specialty Mental Health Services (SMHS) and/or services funded by the Mental Health Services Act (MHSA) for individuals on county probation, in a county jail, on parole, or on Post-Release Community Supervision (PRCS). This IN updates and supersedes [MHSUDS IN 19-007](#) due to the passage of SB 389.

BACKGROUND: Several funding sources are available to cover mental health services for individuals on county probation, in a county jail, on parole, or PRCS.

Medi-Cal Specialty Mental Health Services:

After the Affordable Care Act expanded Medi-Cal eligibility in 2014, many probationers, individuals on PRCS, parolees, and county jail inmates became eligible for Medi-Cal. Medi-Cal eligibility is determined based on several factors, and beneficiaries are assigned aid codes reflecting the reason for Medi-Cal eligibility and their scope of coverage. MHPs are responsible for submitting claims for Medi-Cal reimbursement of SMHS and should check beneficiaries' aid codes to determine if SMHS are included in a beneficiary's scope of coverage. The [Short Doyle Medi-Cal Master Aid Code Chart on the DHCS website](#) provides a comprehensive list of Medi-Cal aid codes that include SMHS in their scopes of coverage.

SMHS¹ include mental health services, medication support services, day treatment intensive, day rehabilitation, crisis intervention, crisis stabilization, adult residential treatment services, crisis residential treatment services, psychiatric health facility services, psychiatric inpatient hospital services, and targeted case management. Intensive care coordination, intensive home based services, therapeutic behavioral services, and therapeutic foster care are SMHS available to children and youth under the age of 21.

The Mental Health Services Act

California voters passed the MHSA in 2004. MHSA is funded by a one percent income tax on personal income in excess of \$1 million per year. The MHSA is designed to expand and transform California's mental health systems to better serve individuals with and at risk of serious mental health issues, and their families. The MHSA addresses a broad continuum of prevention, early intervention, and service needs, and the necessary infrastructure, technology and training elements to support the system.

The State Controller's Office distributes MHSA funds to counties on a monthly basis (Welfare & Institutions Code (W&I), § 5891(c)). Counties spend the funds on five components: Community Services and Support; Prevention and Early Intervention; Innovation; Capital Facilities and Technological Needs; and Workforce Education and Training (W&I § 5892(a), (b)). The MHSA requires each county mental health department to prepare and submit a Three-Year Program and Expenditure Plan and Annual Update to DHCS and the Mental Health Services Oversight and Accountability Commission (W&I § 5847). The plans and updates are subject to a community planning

¹ SMHS are authorized pursuant to a waiver approved by the Centers for Medicare and Medicaid Services under Section 1915(b) of the Social Security Act. Under the Medi-Cal SMHS Waiver, MHPs must ensure the provision of Medi-Cal SMHS, as described in California's Medicaid State Plan and Title 9, California Code of Regulations (CCR), Section 1810.247, to all Medi-Cal beneficiaries who meet medical necessity criteria (CCR, tit. 9, § § 1810.100, 1820.205, 1830.205, 1830.210).

process that includes stakeholder involvement and approval by the county board of supervisors (W&I § 5848).

SB 389 amended MHSA to allow funding to be used for mental health services for persons participating in a pre-sentencing or post-sentencing diversion program or who are on parole, probation, PRCS, or mandatory supervision.

Public Safety Realignment

Public Safety Realignment was enacted through Assembly Bill 109 in 2011 (Chapter 15, Statutes of 2011). Public Safety Realignment mandates that individuals sentenced to non-serious, non-violent or non-sex offenses serve their sentences in county jails instead of state prisons. Along with Public Safety Realignment, the Post-Release Community Supervision Act of 2011 (PCRS, Penal Code, §§ 3450-3465) established that certain individuals released from state prison are subject to community supervision by county probation departments. PRCS is not available for some individuals, such as those who committed a serious or violent felony, high-risk sex offenders, or individuals required to undergo treatment at a State Hospital. Realignment funding is administered by counties and can be used for coverage of mental health services for individuals under PRCS.

POLICY

Medi-Cal Specialty Mental Health Services

MHPs are required to provide or arrange for the provision of SMHS to beneficiaries in their counties who meet SMHS medical necessity criteria, consistent with the beneficiaries' mental health treatment needs and goals as documented in the beneficiaries' client plans (W&I § 14684). Medi-Cal beneficiaries in need of SMHS may self-refer to the MHP for an assessment, or they may be referred from a variety of sources, such as a primary care physician, law enforcement, or county social services departments.

Federal Financial Participation is not available for individuals who are inmates of public institutions (42 C.F.R., §§ 435.1009, 435.1010). MHPs are therefore prohibited from claiming Federal Financial Participation for providing SMHS to county jail inmates, except for psychiatric inpatient hospital services and psychiatric hospital professional services provided off the grounds of the correctional facility, as specified in [MHSUDS IN 15-029](#) and All County Welfare Directors Letters No. [11-27](#), [13-18](#), [14-26](#), and [14-26E](#).

Parolees, probationers, and individuals on PRCS are not inmates (42 U.S.C. § 1396d(a)(29)(A); W&I § 14011.10.). Therefore, Medi-Cal beneficiaries on county probation, parole, or on PRCS are entitled to receive SMHS if they meet medical necessity criteria and SMHS are needed to address the beneficiary's mental health needs and goals as documented in the beneficiary's client plan. A Medi-Cal beneficiary's entitlement to receive SMHS applies regardless of whether the beneficiary is currently receiving mental health services through the state parole system. DHCS encourages collaboration between MHPs and the California Department of Corrections and Rehabilitation's Mental Health Services Continuum programs to coordinate care for these clients. MHPs are required to identify appropriate funding sources for Certified Public Expenditures, e.g., for parolees, MHPs could utilize realignment funds.

As noted in [MHSD IN 13-01](#), the MHPs responsibility to provide SMHS has not changed under 2011 Public Safety Realignment.

The Mental Health Services Act

Due to the passage of SB 389, MHSA funds may be used to provide services to persons who meet existing eligibility criteria for MHSA-funded programs and who are participating in a pre-sentencing or post-sentencing diversion program, to provide services to persons who are on parole, probation, PRCS, or mandatory supervision. When included in county plans, and in accordance with all the requirements outlined in W&I § 5349, funds may be used for the provision of mental health services in an Assisted Outpatient Treatment program in counties that elect to participate in the Assisted Outpatient Treatment Demonstration Project Act of 2002 (Article 9 (commencing with Section 5345) of Chapter 2 of Part 1). Additionally, MHSA may be used for programs and/or services provided in juvenile halls and/or county jails when the purpose of the service is facilitating discharge (CCR, Title 9, § 3610).

MHSA funded services are not available for individuals incarcerated in state or federal prisons (W&I § 5813.5(f); CCR, tit. 9, § 3610, subd. (f)).

To secure MHSA funds for the above stated purposes, all other MHSA requirements for MHSA-funded programs, including that the program must be set forth in the 3-year expenditure plan and annual update and be vetted through a local stakeholder process, must be met (W&I § 5847).

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In situations where an individual is not eligible for MHSA funded services, to MHSA cannot be used as the non-federal funding source for Medi-Cal-reimbursed SMHS.

If you have any questions regarding this BHIN, please contact your county liaison, or email CountySupport@dhcs.ca.gov.

Sincerely,

Original signed by

Kelly Pfeifer, M.D.
Deputy Director
Behavioral Health