



JENNIFER KENT
DIRECTOR

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



EDMUND G. BROWN JR.
GOVERNOR

DATE: February 8, 2018

MHSUDS INFORMATION NOTICE NO.: 18-009

TO: COUNTY BEHAVIORAL HEALTH PROGRAM DIRECTORS
COUNTY DRUG & ALCOHOL ADMINISTRATORS
COUNTY BEHAVIORAL HEALTH DIRECTOR'S ASSOCIATION
COUNTY AOD FISCAL ADMINISTRATORS

SUBJECT: Diversion of County Behavioral Health Subaccount (BHS) Allocations for
Drug Medi-Cal Services

PURPOSE

The purpose of the Information Notice is to remind counties that their annual 2011 Realignment BHS allocation includes funds intended to pay for the provision of all Drug Medi-Cal (DMC) covered services to Medi-Cal beneficiaries within their county. If a county fails to arrange, provide or subcontract for any DMC covered services within their county, in accordance with Government Code Section 30027.10, the State may elect to divert the amount needed of that county's BHS allocation to pay for DMC services provided to those residents, as described more fully below.

Background:

The Department is the single state Medicaid agency and, as such, it is obligated to maintain sufficient statewide access to all DMC services approved in the Medi-Cal State Plan, as a condition of continued receipt of federal financial participation. (42 USC Sections 1396a and 1396c; 42 Code of Federal Regulations (CFR) Sections 430.10, 430.35 and 431.10; see also California State Plan, Section 3, Attachment 3.1-A, Section 13(d); Limitations on Attachment 3.1-A, Section 13.d.5; and Supplement 3 to Attachment 3.1-A, page 4; see also California State Plan, Section 3, Attachment 3.1-B, Section 13(d); Limitations on Attachment 3.1-B, Section 13.d.5; and Supplement 3 to Attachment 3.1-B, page 4; see also Welfare and Institutions Code Section 14124.24.)

MHSUDS INFORMATION NOTICE NO.: 18-009

February 8, 2018

Page 2

Pursuant to Government Code Section 30025(b)(2)(B), the State distributes funds for the provision of DMC services to counties as part of each county's BHS allocation. 2011 Realignment statutes assign the counties the responsibility for Public Safety Services, including the prevention, treatment, and provision of recovery services for substance abuse. (Government Code Sections 30025(i) and 30026.5(a).) Section 30025 states that County BHS funds shall be used exclusively to fund the Drug Medi-Cal Program, residential perinatal drug services, drug court operations, non-Drug Medi-Cal substance abuse treatment programs, and Medi-Cal specialty mental health services. (California Government Code Section 30025(f)(16)(B)).

In order to utilize the BHS allocation to provide DMC services, a county must contract with the Department to arrange, provide, or subcontract for the provision of DMC services for the Medi-Cal eligible residents of that county. (Welfare and Institutions Code Section 14124.24, subdivisions (c) and (d).) If a county declines to contract with the Department, or if the Department determines a county has otherwise put federal Medicaid funding at risk, for instance, by failing to provide DMC services to its eligible residents, the California Government Code provides a process by which the State can divert the amount needed to perform functions or provide services at the level required to fully obtain federal funds from the county's BHS allocation (Government Code Section 30027.10.). Funds diverted from a county allocation pursuant to Government Code Section 30027.10 are deposited in the County Intervention Support Services Subaccount (CISSS) (Government Code Section 30027.10.). The CISSS is under the control of the Department and is used to fund the provision of DMC services by providers contracting directly with the Department. (Government Code Section 30027.10, subdivision (b).)

DMC Contract Requirements:

The DMC contract between the Department and a contracting county specifies that the contracting county "shall establish assessment and referral procedures **and** shall arrange, provide, or subcontract for covered services in the Contractor's service area." (See Fiscal Year 2017-2020 DMC Contract, Exhibit A, Attachment I, Part I, Section 2, Subsection A, Paragraph 1.) The contract goes on to define "covered services" to include the following:

- a) Outpatient drug-free treatment;
- b) Narcotic replacement therapy;
- c) Naltrexone treatment;
- d) Intensive Outpatient Treatment; and
- e) Perinatal Residential Substance Abuse Services (excluding room and board).

(DMC Contract, Exhibit A, Attachment I, Part I, Section 2, Subsection A, Paragraph 1)

The contract further requires that a contracting county “maintain continuous availability and accessibility of covered services and facilities, service sites, and personnel to provide the covered services.” (DMC Contract, Exhibit A, Attachment I, Part I, Section 2, Subsection B, Paragraph 1.) These services must be provided to Medi-Cal beneficiaries with reasonable promptness, may not be limited due to budgetary constraints, and must be provided to requesting beneficiaries without regard to the county of residence (DMC Contract, Exhibit A, Attachment I, Part I, Section 2, Subsection B, Paragraphs 1 and 2.). A referral to a non-contracting provider or to another county without an appropriate funding agreement does not fulfill a county’s contractual obligation to arrange, provide or subcontract for DMC services.

If a county does not fulfill its contractual obligations to arrange, provide or subcontract for the provision of **all** DMC covered services, the Department may, at its discretion, require that the contracting county forfeit its county realignment funds, pursuant to Government Code Section 30027.10, and may require that the county surrender its authority to function as the administrator of DMC services (Contract, Exhibit A, Attachment I, Part I, Section 2, Subsection C, Paragraph 3.). Additionally, the Department will enter into direct contracts with providers and will invoice the county for all DMC claims for services provided to the residents of that county (Contract, Exhibit B, Part II, Section 3, Subsection B).

For Counties Not Currently Providing All Covered DMC Services:

So that all DMC services are being provided statewide, the Department requires the following:

- Any county not currently contracting with the Department for the provision of DMC services shall affirm, in writing, by February 28, 2018, that it will enter into a contract with the Department to provide DMC services.
- Any DMC contracting county that is not fulfilling its contractual obligations shall affirm, in writing, by February 28, 2018, that it is arranging, providing, or subcontracting for **all** DMC services within that county as required by that county’s contract.

Notice Concerning Substance Abuse Prevention and Treatment (SAPT) Block Grant Funding

In addition to confirming county compliance with DMC contracting requirements, counties are advised that the Department is concurrently evaluating county utilization of SAPT Block Grant funding to ensure compliance with federal law, regulations and SAPT Block Grant contracts between the State and each county. Counties are reminded that SAPT Block Grant funding is a payer of last resort and cannot supplant State funding of alcohol and

MHSUDS INFORMATION NOTICE NO.: 18-009

February 8, 2018

Page 4

other drug prevention and treatment programs. 45 CFR 96.134(a) and 96.137(a). The Department anticipates issuing additional guidance relating to SAPT grant awards and utilization in the coming months.

If you have any further questions, please contact Don Braeger, Chief, SUD Program, Policy and Fiscal Division at (916) 327-8608.

Sincerely,

Original signed by

Brenda Grealish, Acting Deputy Director
Mental Health & Substance Use Disorder Services