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DIRECTOR

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



EDMUND G. BROWN JR.  
GOVERNOR

June 29, 2018

Kirsten Barlow, Executive Director  
County Behavioral Health Directors Association  
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Sacramento, CA 95818

Dear Ms. Barlow:

This is in response to your correspondence with the Department of Health Care Services (DHCS) regarding the Mental Health Plan (MHP) Contract. Specifically a June 15, 2018, letter; the discussion on Monday, June 25, 2018, between DHCS and the California Behavioral Health Directors Association of California (CBHDA), the California State Association of Counties (CSAC), and the County Counsels' Association of California; and your email request on June 28, 2018. These communications focused on the Mental Health Plan (MHP) contract effective July 1, 2017, and the amendment to the current MHP contract. The letter identifies three main concerns: 1) the June 30, 2018, due date for MHPs to return signed contracts to DHCS, 2) the effective date of the new contracts, and 3) the zero dollar amount for the contracts. The email we received on June 28, 2018, further requested that DHCS extend the current contract for 60 days. Most of these concerns were discussed at the meeting on June 25, 2018, and each item is addressed below.

**June 30, 2018, Submission Deadline and Request to Extend the Current Contract 60 Days**

DHCS is requesting that MHPs return their signed MHP contract documents to DHCS by June 30, 2018. DHCS recognizes the efforts needed to secure approval for contracts, including county counsel review, Board of Supervisors approval. Considering these processes, DHCS acknowledges that the June 30, 2018, deadline is tight and will not be possible for some counties to meet. DHCS established that due date in order to receive and execute the amendments prior to the expiration of the current MHP contracts. Many counties have reached out to DHCS directly with similar concerns about the June 30, 2018, deadline. While DHCS is not offering formal "extensions," MHPs are advised to return their contracts as quickly as possible, and provide DHCS with the anticipated date that the signed contract documents will be submitted.

Kirsten Barlow, Executive Director  
June 29, 2018  
Page 2

Related to this concern, your letter recommends that DHCS honor the 60-day review period for the amendment, and extend the current contract to August 2018. Federal managed care regulations (42 C.F.R. part 438), which apply to California's MHPs, were revised and resulted in mandatory changes to the MHP contracts prior to the expiration of the current contracts. As such, the 2013-17 MHP contract amendment only changes the contract end date. It does not change any other term or provision of the contract. The 2017-22 MHP Contract has a retroactive start date of July 1, 2017, as required by federal law. MHPs have been and continue to be required to comply with the applicable revised federal rules, and are also required to have an updated MHP contract that is executed timely. While DHCS acknowledges the provision in the existing contract that allows for a 60-day review period, the amendment does not make any changes to the provisions of the contract that would require review. The amendment only changes the end date of the contract. DHCS cannot amend contracts after they expire; therefore, the contracts will most likely expire and the amendments will not be able to be executed. DHCS must still have a record of the signed amendments, even if ultimately the contracts are not executed.

On June 28, 2018, you emailed DHCS on behalf of CBHDA members to request that DHCS provide, in writing, a 60-day extension on current MHP contracts, which would otherwise expire on June 30, 2018. DHCS is unable to extend the current contract to end in August 2018, as such an extension would be a unilateral amendment to the contract, and DHCS cannot unilaterally amend the current MHP contract. For an amendment to be effective it must be "formally approved by both parties" (Exhibit E, Paragraphs 1 and 2 C). Since an extension would require another amendment, which takes time to achieve, DHCS would not be able to process or execute that action prior to the expiration of the current MHP contracts. As previously mentioned, DHCS cannot amend the contracts after they expire. Furthermore, the new contract has a retroactive start date of July 1, 2017, therefore, there is no benefit to extending the end date of the previous contract.

#### **Retroactive July 1, 2017, Effective Date**

As indicated above, Federal managed care regulations (42 C.F.R. part 438), which apply to California's MHPs, were revised and resulted in mandatory changes applicable to MHPs. The 2017-22 MHP contract has a retroactive start date of July 1, 2017, as required by federal law. MHPs have been and continue to be required to comply with the applicable revised federal rules, and are also required to have an updated MHP contract executed timely. The Centers for Medicare and Medicaid Services (CMS) approved this contract with the July 1, 2017, retroactive start date. As such, DHCS is not able to change the start date of the contract. CMS will not approve a contract with an effective date later than July 1, 2017.

As you indicated in your letter, the current contract contains a provision that obligates the MHPs to comply with all applicable federal and state laws, including any new applicable

Kirsten Barlow, Executive Director  
June 29, 2018  
Page 3

statutes or regulations. Considering this language, MHPs should already be in compliance with applicable, effective federal laws and regulations, regardless of the term of the contract.

In addition, the language in the new contract should be familiar to counties and the associations, as DHCS shared the new MHP contract in draft form and a crosswalk of changes compared to the previous (current) contract with CBHDA. DHCS initially shared these documents in June 2017, and then shared updated versions periodically over the last year. The contract did not substantively change during this time period. In addition, DHCS met with CBHDA and MHPs numerous times and in many forums over the past two years to discuss Federal managed care regulations (42 C.F.R. part 438) implementation, including forthcoming changes to the MHP contract. These forums included, but was not limited to, the CBHDA Medi-Cal Policy Committee, the CBHDA Medi-Cal Final Rule Workgroup, CBHDA Executive Committee, CBHDA Governing Board, DHCS All MHP Monthly calls, and the California Quality Improvement Committee conference.

### **Zero Dollar Amount**

With regard to the dollar amount issue, some historical background information may be helpful. Prior to 2011 realignment, the MHP contracts contained county-specific dollar amounts. These dollar amounts reflected their managed care allocations, which were State General Funds provided to MHPs to be used as non-federal match to pay for specialty mental health services (SMHS). These amounts did not reflect federal financial participation (FFP) paid to MHPs for the provision of SMHS.

Following 2011 realignment, the managed care allocations were eliminated and counties began to receive realignment distributions through the State Controller's Office. This change raised a question of how to represent the dollar amounts in the contracts since realignment funds were not distributed by way of the MHP contract, and FFP continued to be paid on a per claim basis. DHCS explored having a zero dollar contract, but decided in 2012 to issue contracts with individual dollar amounts representing estimated FFP that would be claimed during the term of the contract. These contracts had an April 30, 2018, end date. Due to subsequent changes in the contracting process, these contracts were retracted shortly after being issued, and were replaced with contracts that had the same approximately \$8 billion dollar amount and a

June 30, 2018, end date. This amount represented the estimated total cost of the FFP for **all** counties for all five years of the contract term. It was an intentionally large amount and the same for every county so as to avoid the need to amend the contracts to add funding if FFP reimbursement exceeded the estimated amount. This was, in essence, an artificial dollar amount that wasn't indicative of actual costs that any one county was expected to incur. Most counties had not executed the contracts with individual dollar amounts at the time they were replaced with the \$8 billion dollar contracts, however

Kirsten Barlow, Executive Director  
June 29, 2018  
Page 4

16 counties had executed those contracts, which remained in effect. DHCS intended to address this discrepancy by amending the 16 contracts to be consistent with the \$8 billion dollar amount and June 30, 2018, end date; however, those amendments were never made.

During the development of the 2017-22 MHP contract, DHCS re-visited the contract dollar amount issue and reconsidered the idea of a zero dollar contract. DHCS determined that the new MHP contracts should reflect a zero dollar amount since DHCS reimburses FFP to counties for SMHS in accordance with Chapter 3, Part 2, Division 5 of the Welfare and Institutions Code, along with Sections 5600, 5750, and 5650, as well as Government Codes 11138, 14705, and 14718. Accordingly, the MHP contract is not the vehicle by which FFP funds are paid to counties. Using a zero dollar amount also serves to eliminate the need for contract amendments to change funding amounts based on actual versus estimated expenditures.

DHCS appreciates your recommendation to add language to the contract explaining the zero dollar amount and how services provided under the MHP contract are reimbursed. DHCS will not amend this version of the MHP contract solely to make these changes; however, DHCS may consider including clarification of the zero dollar amount with the amendment that is needed to address Parity provisions, which is expected in the near future.

I hope this information helps address your concerns. Please do not hesitate to let me know if you have any questions.



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