



June 15, 2018

Brenda Grealish
Acting Deputy Director, Mental Health and Substance Use Disorder Services
California Department of Health Care Services
1501 Capitol Avenue, MS 4000, P.O. Box 997413
Sacramento, CA 95899-7413

Subject: County mental health plan contracts, proposed effective date of July 1, 2017

Dear Ms. Grealish,

The County Behavioral Health Directors Association, the County Counselors' Association, and the California State Association of Counties are writing to the Department of Health Care Services (DHCS) to communicate concerns with the mental health plan (MHP) contract amendments that are currently being reviewed by county behavioral health departments and their counsels. We request the opportunity to discuss and resolve these issues with the Department as soon as possible, given that the existing MHP contracts expire on June 30, 2018. The three primary concerns of counties are the timeline for return of a signed contract to DHCS by June 30, 2018, the retroactive contract date of July 1, 2017, and the zero dollar contract amount.

The first concern raised by counties is the date by which the Department has stated each county must return to DHCS its signed MHP contract. We understand the MHP contracts have been sent to counties by DHCS on a flow basis which began the week of May 21st and as of June 7th, there were some counties that had not yet received their contract. The date DHCS indicates as the deadline for return to the Department is June 30, 2018. This is less than six weeks from the date of the first contracts that were sent to counties, and as few as three weeks for other counties whose contracts were sent by DHCS within the last week.

Upon receipt of the MHP contract amendments, counties must review the contract documents in consultation with their counsel and schedule the contract on the agenda for consideration by their Boards of Supervisors, consistent with local policy for adopting agenda. County Board of Supervisors meetings are also subject to the Brown Act, which requires public noticing and specific timeframes for developing and posting agendas. In some counties, the Board of Supervisors will not meet every week in June. For these reasons, it will be impossible for all counties to comply with the June 30th deadline currently imposed by the Department.

In addition, the current MHP contract includes a process for contract amendment negotiations which outlines a 60-day review period as referenced below:

“Should either party during the life of this contract desire a change in this contract, such change shall be proposed in writing to the other party. The other party shall acknowledge receipt of the proposal in writing within 10 days and shall have 60 days (or such different period as the parties mutually may set) after receipt of such proposal to review and consider the proposal, to consult and negotiate with the proposing party, and to accept or reject the proposal. Acceptance or rejection may be made orally within the 60-day period, and shall be confirmed in writing within five days thereafter (MHP Contract Boilerplate, Exhibit E, p. 68).”

Recommendation: We request the Department honor the 60-day review period for each county MHP, which should begin on the date the contract was received by the county from DHCS. To avoid the expiration of current MHP contracts without new contracts in effect, we further recommend the Department extend the current contract period through August 2018. This will allow for the 60-day contract amendment review period while still ensuring that an effective contract is in place between DHCS and each county MHP.

The second concern of counties is the MHP contract period, which is retroactive to July 1, 2017. Counties acknowledge that the Medicaid Managed Care Final Rule was promulgated by the Centers for Medicare & Medicaid Services (CMS) on May 6, 2016 with varied implementation dates dependent on the regulatory section. Many of these new provisions have implementation dates of July 1, 2017 or July 1, 2018. County MHPs have been working diligently over the past year to implement and come into compliance with these extensive changes to federal regulation and continue to work toward implementation for sections with an implementation date of July 1, 2018. While counties understand the need to update the MHP contract language to align with the Final Rule requirements, we believe the current MHP contract language, provided below, sufficiently describes counties’ obligation to comply with applicable laws and regulations:

“Contractor agrees to comply with all applicable federal and state law, including the applicable sections of the state plan and waiver, particularly the statutes and regulations incorporated by reference below, in its provision of services as the Mental Health Plan. The Department will notify Contractor of any changes to these statutes and regulations. Contractor agrees to comply with any changes to these statutes and regulations that may occur during the contract period and any new applicable statutes or regulations (MHP Contract Boilerplate, Exhibit E, p. 75).”

Counties and their contracted services providers have already performed services for FY 17-18 under the MHP in effect for Fiscal Years 2013-2018. After these contracts expire on June 30, 2018, counties would face legal uncertainty in imposing retroactive requirements on their contracted providers to incorporate specific new MHP terms.

Recommendation: We request the Department adjust the new MHP contract effective date to begin on July 1, 2018. As stated above, counties believe the current MHP contract language clearly articulates counties' responsibility to comply with the Final Rule, making a retroactive contract date unnecessary.

The third concern raised by counties is the zero dollar contract amount. The current MHP contracts include a dollar amount which, for the majority of counties, equals a statewide estimated amount of federal financial participation for the contract term. However, the amended MHP contracts from DHCS have changed to zero dollar contracts. The rationale for this change is not evident in the contract language.

Recommendation: We request the Department include a summary of reasons for this change in the MHP contract, Exhibit B "Budget Detail and Payment Provisions." Specifically, we recommend DHCS note in this section: 1) the reason for transitioning to a zero dollar contract, 2) language that confirms that DHCS will still process and pay claims pursuant to the agreement, 3) reference to the separate funding vehicles that pay for SMHS, and 4) the statutory authority for this change. Including this language in the MHP contracts will provide clarity about the process for payment under the contract.

Thank you in advance for your attention to these concerns. We request to meet with the Department as soon as possible to discuss the viability of the county recommendations outlined in this letter.

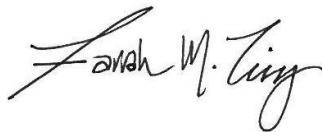
Sincerely,



Kirsten Barlow
Executive Director, CBHDA



Jennifer Henning
Executive Director, CCAC



Farrah McDaid Ting
Legislative Representative, CSAC

cc: Jennifer Kent, Department of Health Care Services
California County Counsels