CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

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September 9, 2014

Jackie Glaze
Associate Regional Director
Centers for Medicare and Medicaid Services
61 Forsyth Street, SW, Suite 4T20
Atlanta, Georgia 30303-8909

Re: Kentucky State Plan Amendment 14-006

Dear Ms. Glaze:

In response to your letter dated August 5, 2014, we have provided the following responses to the questions CMS had regarding KY SPA 14-006.

Plan Pages - Attachment 3.1-A (all below questions are applicable to the Attachment 3.1-B pages):

1. The State has added a Licensed Professional Art Therapist and a Licensed Professional Art Therapist Associate to most of the mental health and substance use disorders services. Please explain how their scope of practice qualifies them to furnish State plan services such as "crisis intervention", "mobile crisis", "collateral outpatient therapy", etc.

   DMS Response: The practice of professional art therapy "means the integrated use of psychotherapeutic principles, visual art media, and the creative process in the assessment, treatment, and remediation of psychosocial, emotional, cognitive, physical, and developmental disorders in children, adolescents, adults, families, and groups." Art therapy services may include the assessment and evaluation of a person, the development of treatment plan, goals and objectives, and the use of therapeutic verbal and visual treatment (201 KAR 34:010). All Licensed Professional Art Therapists in Kentucky are required to have a minimum of a Master or Doctoral degree and completed all necessary supervisory requirements. As a result of the required

education and training Licensed Professional Art Therapists must have to practice independently in Kentucky, DMS has recommended allowing this provider type to participate in the Medicaid program.

2. Page 7.6.1(g) (and all applicable pages): "Screening" for the Certified Alcohol and Drug Counselor (CADC) is unclear. Please provide clarity for the following items:

   a. Please explain the meaning of, "rendering as part of a licensed organization."

      DMS Response: "Rendering as part of a licensed organization" means that the CADC is limited to only rendering services within a licensed organization and is not able to render services when the billing provider is an independently licensed provider or provider group. DMS has updated the language in the State Plan to read "CADC practicing within a licensed organization."

   b. Please add clarifying language to the State plan explaining whether the addition of the language implies that other listed practitioners do not work as "part of a licensed organization."

      DMS Response: The other listed practitioners may work as part of a licensed organization, but they are not limited to working within a licensed organization. The other practitioners may render services under a licensed provider or provider group. DMS has added some supplemental language to help clarify.

   c. Please explain how the state ensures free choice of providers as required by Section 1902(a)(23) of the Social Security Act (the Act) if the CADC must a be part of a licensed organization.

      DMS Response: DMS is not limiting free choice of providers for these services. In fact, the rendering providers listed can provide the service and depending on the service and provider, can do so as an independent provider, part of a provider group, and/or as part of a licensed organization. Practitioners who are not licensed, such as CADCs, require additional resources for oversight, supervision, and management. As such, only a licensed organization has the means to provide those resources to a CADC. Please remember, CADC's are not "licensed" providers in Kentucky, but instead "certified" providers. As such, they are not allowed to contract directly with DMS and must provide services through a licensed practitioner.

3. Page 7.6.1(n): Under "Residential Crisis Stabilization" in the middle of the page, the State plan indicates: "KY Medicaid will not pay for this service in a unit of more than 16 beds or multiple units operating as one unified facility with more than 16 aggregated beds for individuals between the ages of 22 and 64." The additional language is not technically accurate. Please revise the plan language as follows, "KY Medicaid will not pay for this service in a unit of more than 16 beds or multiple units operating as one unified facility with more than 16 aggregated beds except for services furnished pursuant to the State plan benefit 'inpatient psychiatric services for individuals under 21,' (Section 1905(a)(16) of the Act; 42 CFR 440.160) or pursuant to an exclusion for individuals age 65 or older who reside in institutions that are IMDs (Section 1905(a) of the Act; 42 CFR 440.140.)."

   DMS Response: DMS has revised the language, as requested.

4. Page 7.6.1(q): The role of the Peer Support Specialist (PSS) under "Day Treatment" is unclear:

   a. Please explain the meaning of, "rendering as part of a provider group or licensed organization." Page 7.6.1(s) indicates that the PSS "must either be employed by a provider group or licensed organization..." If this is what the state intended, please add a cross reference to Page 7.6.1(s) in the plan for the explanation or insert the language from page 7.6.1(s) into page 7.6.1(q).

      DMS Response: "Rendering as part of a provider group or licensed organization" means that the PSS is limited to rendering services under a provider group or a licensed organization and is not able to render services when the billing provider is an independently licensed provider.

   b. Please add clarifying language to the State plan explaining whether the addition of the "rendering" language implies that the other listed practitioners do not work as "part of a provider group or licensed organization."

      DMS Response: The other listed practitioners may work as part of a provider group or a licensed organization, but they are not limited to working within these settings. The other practitioners may render services under a licensed provider. DMS has clarified in its introductory language for each list of rendering providers that the overarching category of rendering flexibility (i.e., individual provider, provider group, or licensed organization) applies, unless otherwise indicated. DMS has added clarifying language.

c. Please explain how the state ensures free choice of providers as required by Section 1902(a)(23) of the Act if the PSS must be part of a licensed organization.

DMS Response: DMS is not limiting free choice of providers for Day Treatment. In fact, the rendering providers listed can provide the service and depending on the provider can do so as an independent provider, part of a provider group, and/or as part of a licensed organization. Peer support specialists have less education and training and therefore require additional resources for oversight, supervision, and management. As such, only provider groups and licensed organizations have the means to provide those resources to a peer support specialist.

5. Pages 7.6.1(t) and page 7.6.1(u): In order to distinguish the Peer Support Specialists, please consider calling the peers that furnish Parent/Family Peer Support Services, "Parent/Family Peer Support Specialists."

DMS Response: Kentucky's administrative regulations use the term peer support specialists. DMS would prefer to use consistent terminology between its State Plan and regulations in referring to the practitioners rendering peer support and parent/family peer support as "peer support specialists".

6. Page 7.6.1(ii) and page 7.6.1(jj): Under "Residential Services for Substance Use Disorders" the state plan indicates, "Services should have less than or equal to 16 patient beds, <u>if provided to individuals between the ages of 22 and 64</u>..." The additional language is not technically accurate. Either the currently approved language should stand, or the state should add the language as in Question 3 above, "Services must not have more than 16 patient beds, unless services are furnished pursuant to the State plan benefit 'inpatient psychiatric services for individuals under 21,' (Section 1905(a)(16) of the Act; 42 CFR 440.160) or pursuant to an exclusion for individuals age 65 or older who reside in institutions that IMDs (Section 1905(a) of the Act; 42 CFR 440.140.)."

DMS Response: DMS has updated the language accordingly.

7. Page 7.6.1(kk): Under "Residential Services for Substance Use Disorders," please add to the State plan how beneficiaries exercise freedom of choice of providers as required by Section 1902(a)(23) of the Act. Please also add an assurance that all willing and qualified providers may furnish "Residential Services for Substance Use Disorders."

DMS Response: In Kentucky, state law requires that entities that provide residential services for substance use disorders must be licensed. Only a licensed organization has the appropriate resources required to provide residential services. Individuals

have a choice among the licensed organizations that are able to provide these services. DMS has added an assurance, per the request.

8. Page 7.6.1(pp): Under "Assertive Community Treatment", the State plan indicates, "Basic living skills are rehabilitative services focused on teaching activities of daily living..." The "teaching of activities of daily living" appears to be a "habilitative" service the helps individuals "acquire" or "maintain" skills/functions and not "rehabilitative" services that reduce disability and restore function. Please revise the service description to reflect the purposes of the rehabilitative services benefit pursuant to 42 CFR 440.130(d).

   DMS Response: DMS has revised the language, as requested.

Plan Pages - Attachment 4.19-B

9. Page 20.15(1)(a) (x and xi): Qualifications of providers should be included in the coverage section of the state plan. Please remove the qualifications from these two paragraphs.

   DMS Response: DMS has updated the language accordingly.

10. Page 20.15(1)(a): Please change the sunset language to read, "The payment methodology for services provided in CMHCs will end on December 31, 2014.

    DMS Response: DMS has updated the language accordingly per discussions with CMS.

Funding Questions

The following questions are being asked and should be answered in relation to all payments made to all providers reimbursed pursuant to a methodology described in Attachment 4.19-B of this SPA.

11 Section 1903(a)(1) provides that federal matching funds are only available for expenditures made by states for services under the approved State plan. Do providers receive and retain the total Medicaid expenditures claimed by the state (includes normal per diem, supplemental, enhanced payments, other) or is any portion of the payments returned to the state, local government entity, or any other intermediary organization? If providers are required to return any portion of payments, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the payments, a complete listing of providers that return a portion of their payments, the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the state (i.e., general fund, medical services account, etc.).

DMS Response: DMS confirms that providers receive and retain all Medicaid reimbursements.

12. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the state share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide state share. Note that if the appropriation is not to the Medicaid agency, the source of the state share would necessarily be derived through either an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and state share amounts for each type of Medicaid payment. If any of the non-federal share is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the state agency receives the transferred amounts from the local governmental entity transferring the funds. If CPEs are used, please describe the methodology used by the state to verify that the total expenditures being certified are eligible for federal matching funds in accordance with 42 CFR 433.51(b). For any payment funded by CPEs or IGTs, please provide the following:
    (i) a complete list of the names of entities transferring or certifying funds;
    (ii) the operational nature of the entity (state, county, city, other);
    (iii) the total amounts transferred or certified by each entity;
    (iv) clarify whether the certifying or transferring entity has general taxing authority and,
    (v) whether the certifying or transferring entity received appropriations (identify level of appropriations).

    DMS Response: Not Applicable

13. Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for federal financial participation to states for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.

    DMS Response: Not Applicable

14. Does any governmental provider receive payments that in aggregate (normal per diem, supplemental, enhanced, other) exceed their reasonable costs of providing services? If payments exceed cost of services, does the state recoup the excess and return the federal share of the excess to CMS on the quarterly expenditure report?

    DMS Response: Not Applicable

If you have additional questions, please contact Sharley Hughes.

Sincerely,

Lawrence Kissner
Commissioner

LK/sjh

Enclosure