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January 9, 2009

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Ms. Caroline Castaneda  
Chief, Benefits Operations.  
Medi-Cal and Other Health Care Benefits Branch  
Department of Mental Health

RE: Draft DMH Information Notice Re: SB 785 dated December 19, 2008

Dear Ms. Castaneda,

We have reviewed the December 19, 2008, Draft Department of Mental Health ("DMH") Information Notice Re: SB 785 ("notice"), and appreciate the opportunity to comment. Clarification of the duties and procedures required of county Mental Health Plans ("MHPs") to foster, guardianship and adopted children is a critical step towards meeting California's statutory and moral obligation to provide adequate mental health care to Medi-Cal recipients. The process of obtaining feedback from multiple independent stakeholders represents an important step towards the implementation of SB 785<sup>1</sup>, which can potentially improve access to specialty mental health services for out-of-county children<sup>2</sup>, especially children who receive Kinship Guardianship Assistance Payments ("Kin-GAP")<sup>3</sup> and Adoption Assistance Program ("AAP")<sup>4</sup> benefits.

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<sup>1</sup> Senate Bill 785 (Steinberg), Chapter 469, Statutes of 2007

<sup>2</sup> Out-of-county children are children residing in a county (the "host county") other than the one in which they entered the dependency system (the "county of origin"). The county of origin is defined as the county "where legal jurisdiction has been established and/or that has financial responsibility for the child or youth. "County of Origin" is synonymous with the terms "County of Adjudication" and "County of Responsibility." 9 CCR § 1810.207.5. The host county is defined as the county "where the child or youth is living when the child or youth is not living in the county of origin." 9 CCR § 1810.220.5.

<sup>3</sup> Cal. Welf. & Inst. Code §§ 11360-11376

<sup>4</sup> Cal. Welf. & Inst. Code §§ 16115-16125

Our comments fall into two main categories. For one, the notice fails to distinguish between foster children on the one hand, and Kin-GAP and AAP children on the other. SB 785 makes this distinction unequivocally. Secondly, the notice does not elaborate sufficiently upon the broad directives contained in SB 785, and does not provide MHPs adequate guidance regarding their responsibilities under this statute. Our specific comments follow.

1. The notice states that the “county of origin is responsible for providing or arranging for medically necessary mental health services for children residing outside their county of origin.” This is an incomplete statement of the law with respect to Kin-GAP and AAP children. For these two groups of children, SB 785 makes the host county directly responsible for providing mental health services. *See* Cal. Welf. & Inst. Code § 11376 (“A foster child who has become the subject of a legal guardianship, who is receiving assistance under the Kin-GAP Program, including Medi-Cal, shall be provided medically necessary specialty mental health services by the local mental health plan in the county of residence of his or her legal guardian ...”). *See also* Cal. Welf. & Inst. Code § 16125 (“A foster child whose adoption has become final, who is receiving or is eligible to receive Adoption Assistance Program benefits, including Medi-Cal, and whose foster care court supervision has been terminated, shall be provided medically necessary specialty mental health services by the local mental health plan in the county of residence of his or her adoptive parents ...”). WIC Sections 11376 and 16125 represent a fundamental expansion of county responsibilities towards Kin-GAP and AAP children. SB 785 clearly indicates that MHPs can no longer deny services to any Kin-GAP or AAP child on the basis that the child’s Medi-Cal is from another county. Moreover, the law in no way reduces the county of origin’s obligation to these youth. Thus, the statute does not prevent the county of origin from providing services to these children, notwithstanding the county of residence’s coextensive obligation.
2. As drafted, the notice understates the responsibilities that SB 785 imposes upon host counties for Kin-GAP and AAP children. The only reference to host county responsibilities in the notice is the following: “The host county MHP must submit an authorization request, prepared by the provider, to the MHP in the child’s county of origin.” This is merely one aspect of host county responsibilities towards Kin-GAP and AAP children, imposed by WIC Sections 11376 (a) and 16125 (a) respectively. SB 785 imposes upon host counties the

much broader responsibility of “provid[ing] medically necessary specialty mental health services” to out-of-county Kin-GAP and AAP children. *See* Cal. Welf. & Inst. Code § 11376; Cal. Welf. & Inst. Code §16125. The notice must reflect this broad provision of law, and give MHPs more detailed guidance to implement it.

a. Under SB 785, the state must ensure that county MHPs do not discriminate against any out-of-county Kin-Gap and AAP children through their access team or other county administrative or gate-keeping functions. If the host county MHP is contacted with a request for mental health services for an out-of-county child, it must necessarily identify whether the child is a recipient of Kin-GAP or AAP. If so, the MHP must provide appropriate mental health services. Because the MHP is responsible for providing services to these children just as it is to in-county children (albeit with the county of origin making the authorization and payment), all the MHP responsibilities pertaining to service provision, as listed in the California Code of Regulations (“CCR”) apply. *See* 9 CCR §§ 1810.305 – 1850.535. These responsibilities include, but are not restricted to:

- Provision of specialty mental health services when medical necessity criteria are met, *See* 9 CCR § 1810.345.
- Notification of beneficiaries and outreach efforts, *See* 9 CCR § 1810.360.
- Reports to DMH of beneficiary grievances and appeals, *See* 9 CCR § 1810.375 (a).
- Being subject to civil penalties for failure to comply, *See* 9 CCR § 1810.385.
- Compliance with access standards for specialty mental health services, including the provision of a state-wide, toll-free telephone number 24 hours a day, 7 days per week, with language capability in all languages spoken by the beneficiaries of that MHP; provision, upon request, of a

second opinion; and maintenance of request logs. *See* 9 CCR § 1810.405.

- Development and implementation of a Cultural Competence Plan, *See* 9 CCR § 1810.410.
- Coordination of physical and mental health care, *See* 9 CCR § 1810.415.
- Quality Management, *See* 9 CCR § 1810.440.

b. Each MHP is required to submit an Implementation Plan to the DMH, including “[o]utreach efforts for the purpose of providing information regarding access under the MHP to beneficiaries and providers.” 9 CCR § 1810.310 (a)(2)(B). Thus, as part of their responsibility towards out-of-county Kin-GAP and AAP children, MHPs must instruct their providers that they can no longer refuse to serve Kin-GAP or AAP children simply because they have out-of-county Medi-Cal. When a child has Kin-GAP or AAP-linked Medi-Cal, providers must prepare a Treatment Authorization Request (“TAR”) and send it to their local MHP, which will in turn forward it to the county of origin MHP<sup>5</sup>. *See* Cal. Welf. & Inst. Code § 11376(a); Cal. Welf. & Inst. Code § 16125(a). This may require changes to MHP/provider contracts.

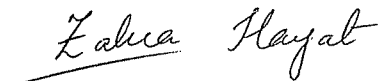
3. SB 785 continues to hold the county of origin responsible for authorizing and paying for mental health services provided to out-of-county youth. That means that most services provided to out-of-county recipients will be subject to the TAR procedures. Thus, DMH’s notice should give county of origin MHPs guidance regarding acceptable versus unacceptable bases for denying TARs for out-of-county children. Most importantly, DMH must make clear in its notice that the county of origin MHP cannot deny a TAR on the basis that the authorizing MHP does not provide the requested service to children residing in its own county. California’s county-based system allows MHPs to broadly

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<sup>5</sup> The notice should also make clear that county of residence MHPs may authorize providers to submit TARs directly to county of origin MHPs.

determine the specialty mental health care service arrays offered to Medi-Cal recipients, and as a result, MHPs' provider networks and services may differ significantly among counties. If county of origin MHPs are allowed to deny out-of-county TARs simply because they do not provide the requested service to resident children, out-of-county children may face frequent service denials. Moreover, there is no valid reason to deny medically necessary services simply because the county authorizing the service does not provide them; in fact, MHPs are explicitly required to authorize out-of-plan services for out-of-county children, regardless of whether the MHP provides the services itself. *See* 9 CCR § 1830.220 (b)(4). Likewise, DMH must emphasize that the TAR process is an authorization mechanism first-and-foremost. Thus, differential costs (e.g., higher hourly or capitated payment rates in the county of residence than in the county of origin) among counties cannot be a basis for denying a TAR. More generally, the notice must give guidance that ensures that TARs are not denied based on the administrative convenience of the county of origin's MHP.

Respectfully submitted,



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