

Section 1915(b) Waiver  
Proposal For  
MCO, PIHP, PAHP, PCCM Programs  
And  
FFS Selective Contracting Programs  
January 2007

## Section A: Program Description

### Part I: Program Overview

#### **Tribal consultation**

*For initial and renewal waiver requests, please describe the efforts the State has made to ensure Federally recognized tribes in the State are aware of and have had the opportunity to comment on this waiver proposal.*

The Department of Health Services (DHS) and the Department of Mental Health (DMH) developed a notification letter and waiver summary (See Attachment CD-1) for the Medi-Cal Specialty Mental Health Services Consolidation waiver program which was sent to Dr. David Sprenger, Chief Medical Officer, California Area Indian Health Services, on November 3, 2006 for dissemination to tribal governments. The State requested that comments be provided to DHS within 30 days of the date of the letter. As of the date of this submission, no written comments have been received by DHS from federally recognized Tribes or other Tribal organizations in California.

#### **Program History**

*For renewal waivers, please provide a brief history of the program(s) authorized under the waiver. Include implementation date and major milestones (phase-in timeframe; new populations added; major new features of existing program; new programs added).*

#### Overview of Request for Waiver Renewal

California is requesting renewal of the Medi-Cal Specialty Mental Health Services Consolidation waiver. The specifics of the renewal request begin in Section A: Program Description, Part I: Program Overview, Section A. Statutory Authority.

Section 1915 b waivers relevant to specialty mental health have been in effect in California since 1995. The current request refers to the fifth renewal of the Medi-Cal Specialty Mental waiver and, if granted will be effective from April 1, 2007 to March 31, 2009.

#### Program Design for Medi-Cal Mental Health Managed Care

The design of managed care for California's Medi-Cal mental health program includes three steps, to be phased in over several years. Medi-Cal Psychiatric Inpatient Hospital Services Consolidation was the first phase, based on the authority granted by the freedom of choice waiver approved by the Centers for Medicare and Medicaid Services (CMS) effective March 17, 1995. The second phase is Medi-Cal Specialty Mental Health Services Consolidation, based on the renewal, modification and renaming of the Medi-Cal Psychiatric Inpatient Hospital Services Consolidation waiver, which was approved by CMS on September 5, 1997. The SMHSC phase has been in place continuously since September 5, 1997. The final planned phase would be the transfer of risk for federal financial participation (FFP) through capitation or other risk arrangement, to be phased in

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at a later date. Although the State continues to consider capitation or other risk arrangement, because of uncertain economic conditions, the State does not expect to move toward this phase during the fifth waiver renewal period.

History/Key Events and Timeline Relevant to Mental Health services in California

1957: California passed legislation creating the Short-Doyle Program, a delivery system for community mental health services managed by counties through directly operated and contract providers.

July 1965: Congress passed Title XVIII Medicare legislation and Title XIX Medicaid legislation as amendments to the Social Security Act (the Act) expanding the scope of health benefits to persons eligible for federal grants: for persons 65 years of age and over, (Medicare) and providing federal matching funds to states that implemented a comprehensive health care system for the poor under the administration of a single state agency (Medicaid).

1966: the California Medical Assistance Program (Medi-Cal) was established to provide for medical services to eligible federal cash grant welfare recipients. The specialty mental health services reimbursed by this program included psychiatric inpatient hospital services, nursing facility care, and professional services provided by psychiatrists and psychologists.

1971: California added Short-Doyle community mental health services into the scope of benefits of the Medi-Cal program for the first time enabling counties to obtain federal matching funds for their costs of providing Short-Doyle community mental health services to persons eligible for Medi-Cal.

1971: The Medi-Cal program was split into two mental health delivery systems: the Fee-for-Service/Medi-Cal (FFS/MC) system; and a new benefit, Short-Doyle/Medi-Cal (SD/MC) services provided through counties.

- SD/MC services included many of the services provided by the Short-Doyle program, but not all. Socialization and vocational programs, for instance, were not covered.
- The SD/MC program provided a much broader range of mental health services, using a wider group of service delivery personnel, than were offered under FFS/MC.

October 1989: A Medicaid State Plan Amendment added targeted case management for individuals with mental illness to the scope of benefits offered under the SD/MC system.

July 1993: A State Plan Amendment added mental health services available under the Rehabilitation Option to the SD/MC scope of benefits and broadened the range of personnel who could provide services and the locations at which services could be delivered.

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March 17, 1995: Based on approval of a Section 1915(b) waiver, California consolidated FFS/MC and SD/MC psychiatric inpatient hospital services at the county level. County mental health departments became responsible for both FFS/MC and SD/MC psychiatric inpatient hospital systems for the first time. The Health Care Financing Administration (HCFA) (now CMS) approved State Plan Amendment 95-016, which described the reimbursement methodology used for psychiatric inpatient hospital services under the consolidated program. The initial waiver period was March 17, 1995 until the waiver was renewed on September 5, 1997.

February 1995: A separate Section 1915(b) waiver was also approved for the Medi-Cal Mental Health Care Field Test (San Mateo County) to field test various aspects of a fully integrated and consolidated Mental Health Plan (MHP) for Medi-Cal beneficiaries. The field test included the provision of both psychiatric inpatient hospital services and other specialty mental health services.

August 1997: a first waiver renewal request for the San Mateo Field test was submitted. It was approved by CMS in June 1998.

- San Mateo County continued the systems put in place during the initial waiver period and began field testing federal reimbursement based on a six-level case rate, with three levels of payment for children and three levels for adults.
- San Mateo County MHP assumed the authorization and management of pharmacy and related laboratory services when prescribed by a psychiatrist for a mental health condition. FFP is claimed for these services based on fee-for-service payments to the Pharmacy Benefits Management contractor and the MHP administrative costs for the services.

September 1997: California requested and was granted a renewal, modification and renaming of the Medi-Cal Psychiatric Inpatient Hospital Service Consolidation waiver program to include both inpatient hospital and professional specialty mental health services under the responsibility of a single mental health plan (MHP) in each county. The renewed waiver (approved by CMS September 5, 1997) was called Medi-Cal Specialty Mental Health Services Consolidation. The first waiver renewal/modified waiver was in effect from September 5, 1997 through November 19, 2000.

November 1 1997 through July 1, 1998: Implementation of the renewed waiver, referred to as "Phase II" implementation, was phased in, depending on the readiness of a single entity (the MHP) in each county.

- MHPs became responsible for authorization and payment of professional specialty mental health services that were previously reimbursed through the FFS/MC claiming system.

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- Both inpatient hospital and professional Medi-Cal specialty mental health services previously reimbursed through FFS/MC and SD/MC claiming systems became the responsibility of the MHPs.

November 20, 2000, through November 19, 2002: The second waiver renewal for the Medi-Cal Specialty Mental Health Services Consolidation Program.

July 30, 2001 through July 25, 2003: Second waiver renewal period for the San Mateo field test to continue to field test the elements described above

April 28, 2003 through April 27, 2005: The third waiver renewal period for the Medi-Cal Specialty Mental Health Services Consolidation Program.

July 24, 2003: To permit California to continue to operate the Field Test for San Mateo County from July 26, 2003, through July 25, 2005, CMS approved California's request for a two-year continuation of the Medi-Cal Mental Health Care Field Test (San Mateo County), under Section 1915(b) (4) of the Act, to continue to field test the elements described above. This approval included a waiver of the following sections of the Act: 1902(a) (1) Statewideness, 1902(a) (10) (B) Comparability of Services, and 1902(a) (23) Freedom of Choice. This was the last renewal request for the San Mateo Field Test.

The fourth waiver renewal period for the specialty mental health services waiver was effective April 1, 2005 through March 31, 2007.

July 1, 2005: San Mateo County was fully incorporated into California's Medi-Cal Specialty Mental Health Services Consolidation Waiver Program

- As a component of the Medi-Cal Specialty Mental Health Services Consolidation Waiver Program, the State has continued the laboratory and pharmacy aspect of the San Mateo field test since this has proven effective for the San Mateo MHP and its beneficiaries.
- The State proposes to continue coverage of psychiatric medications and related laboratory services by the San Mateo MHP while monitoring usage and cost effectiveness. The State does not propose that other MHPs cover these services.

July 1, 2005: The State added Solano County MHP to the Medi-Cal Specialty Mental Health Services Consolidation waiver program and contracted with the Solano County Mental Health Department to serve as the MHP. Previous to that point in time, Solano County Mental Health Department was under contract with the County Operated Health System (COHS). It is now under direct contract with DMH as the local MHP.

- Solano County Mental Health Department continues it's prior arrangement regarding contracting with the COHS in Solano County for the FFS/MC-type specialty mental health services covered by the COHS.

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- The Solano County MHP covers the SD/MC-type specialty mental health services for beneficiaries who are members of the COHS and all services for those beneficiaries of Solano County who are not members of the COHS.

Additional Historical Information

Note: CCR Title 9 regulations referenced throughout this document can be found at [http://www.dmh.ca.gov/Admin/regulations/docs/FinalRegsText\\_CLEAR\\_06Jun27.pdf](http://www.dmh.ca.gov/Admin/regulations/docs/FinalRegsText_CLEAR_06Jun27.pdf) (See Attachment WB-1).

Note: The contract between the MHPs and DMH referenced can be found at: [http://www.dmh.ca.gov/Admin/regulations/docs/MHP\\_06-09\\_Contract/BoilerplateContract.pdf](http://www.dmh.ca.gov/Admin/regulations/docs/MHP_06-09_Contract/BoilerplateContract.pdf) (See Attachment WB-2)

Changes required by CMS prior to approval of the fourth (4<sup>th</sup>) waiver renewal request relevant to CFR Section 438.114(d)(1)(ii) - Emergency and poststabilization services were made in CCR Title 9 section 1820.225 and the contract between DMH and MHPs at Exhibit A Attachment 1C.

The change required by CMS prior to approval of the fourth (4<sup>th</sup>) waiver renewal request relevant to Section 438.420 Continuation of benefits while the MCO or PIHP appeal and the State fair hearing are pending was made in CCR Title 9 sections 1850.213 and 1850.215. Additionally Notices of Actions (NOAs) were modified to reflect the change. Copies of NOAs can be found on the DMH website as attachments to DMH Letter 05-03 at: <http://www.dmh.ca.gov/DMHdocs/docs/letters05/05-03.pdf>  
[http://www.dmh.ca.gov/DMHdocs/docs/letters05/05-03\\_Encl1.pdf](http://www.dmh.ca.gov/DMHdocs/docs/letters05/05-03_Encl1.pdf)  
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[http://www.dmh.ca.gov/DMHdocs/docs/letters05/05-03\\_Encl5.pdf](http://www.dmh.ca.gov/DMHdocs/docs/letters05/05-03_Encl5.pdf)  
[http://www.dmh.ca.gov/DMHdocs/docs/letters05/05-03\\_Encl6.pdf](http://www.dmh.ca.gov/DMHdocs/docs/letters05/05-03_Encl6.pdf)  
(See Attachment WB-3)

Program Under the Proposed Fifth Waiver Renewal Period

With this fifth waiver renewal request, the State is proposing to continue the current program design and core elements as described in the fourth waiver renewal request approved April 26, 2005 with the following differences:

**California Code of Regulations (CCR) Title 9 permanent Specialty Mental Health Regulation package approved**

As of June 18, 2006, the State operates the Specialty Mental Health program under authority of a permanent regulation package as approved by the California Office of Administrative Law. Prior to this point in time, the program operated under emergency regulations. The permanent regulations incorporate all changes

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mandated by Title 42 CFR as well as changes recommended by stakeholders to enhance the effectiveness and efficiency of the program. The permanent regulations can be found on the DMH website at: [http://www.dmh.ca.gov/Admin/regulations/docs/FinalRegsText\\_CLEAR\\_06Jun27.pdf](http://www.dmh.ca.gov/Admin/regulations/docs/FinalRegsText_CLEAR_06Jun27.pdf). (See Attachment WB-1)

**Modifications to DMH Contracts with MHPs**

Effective FY 06/07, the contract between DMH and MHPs will be in effect for three years rather than being renewed annually as has previously been the case. The contract period is July 1, 2006 to June 30, 2009. Any amendments to contracts between DMH and the MHPs will be submitted to CMS for approval. The complete contract between the MHPs and DMH can be found at: [http://www.dmh.ca.gov/Admin/regulations/docs/MHP\\_06-09\\_Contract/BoilerplateContract.pdf](http://www.dmh.ca.gov/Admin/regulations/docs/MHP_06-09_Contract/BoilerplateContract.pdf) (See Attachment WB-2). Further, since CCR Title 9 regulations related to Specialty Mental Health are now permanent, modifications were made in some sections of the contracts to minimize language duplicative to regulatory language. References to the relevant regulations were inserted. A list of those modifications is attached. (See Attachment CD-2)

**Conlan Law Suit**

During the next waiver period, the State expects to implement the California Court of Appeal's August 15, 2005 decision in the case of *Conlan v. Shewry* (2005) 131 Cal.App.4<sup>th</sup> 1354. In this case, the court determined that under 42 U.S.C. section 1396a(a)(10)(B) (the "comparability provision") the Department of Health Services (DHS) was required to implement a process by which Medi-Cal beneficiaries may obtain prompt reimbursement for covered services for which they paid during the three months prior to applying for Medi-Cal coverage (the "retroactivity period"). The court held that the Department of Health is required to:

- Send notice of the new monetary reimbursement process available to all current and former Medi-Cal recipients who may have claims arising on or after June 27, 1997
- Provide monetary reimbursement to any individual who has a valid claim for reimbursement arising on or after June 27, 1997;
- Provide reimbursement for valid claims arising from the date an application for Medi-Cal benefits is submitted to the date that the application is granted (the "evaluation period");
- Provide reimbursement for services rendered by non-Medi-Cal providers if the services were provided during the retroactivity period (the Department is not required to provide reimbursement for services rendered by non-Medi-cal providers during the evaluation period); and,
- For valid claims, reimburse the beneficiary the amount paid, not to exceed the rate established for that service under the Medi-Cal program.

In November 2005, the DHS requested that DMH implement Conlan for its population of Medi-Cal mental health beneficiaries. Since December 2005, the DMH has been studying ways to implement Conlan. The Administration Division within DMH has the

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lead for Conlan implementation, and staff from Medi-Cal Mental Health Policy are providing consultation. DMH is in the process of issuing county instruction via an Information Notice. Via contract, DHS' fiscal intermediary Electronic Data Systems will process all DMH related Conlan claims with dates of service prior to July 1, 2006, and the MHPs will process all Conlan claims with dates of service after July 1, 2006