



October 10, 2007

Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attention: CMS—2261-P  
P. O. Box 8018  
Baltimore, MD 21244-8018

**Re: Comments on the Proposed Rule for Coverage for Rehabilitative Services  
under the Medicaid Program  
CMS-2261-P**

To Whom It May Concern:

The California Mental Health Directors Association (CMHDA) is pleased to offer our comments on the proposed regulations for the Medicaid Rehabilitation Services Option.

CMHDA is a statewide association that represents the directors of public mental health authorities in counties (and some cities) throughout California, providing mental health services to children, transition-aged youth, adults, and older adults with mental illness. CMHDA's mission is to provide leadership, advocacy, expertise and support to California's county and city mental health programs (and their system partners) that will assist them in serving persons with serious mental illness and serious emotional disturbance. Our goal is to assist in building a public mental health system that ensures the accessibility of quality, cost-effective mental health care that is consumer- and family-driven, recovery- and resiliency-based, and culturally competent.

In California, county mental health agencies are officially designated as the "mental health plans" for Medi-Cal's "specialty mental health" program, which means they are responsible for providing and managing the care for Medi-Cal beneficiaries who have a serious mental illness or serious emotional disturbance

We enthusiastically support the inclusion of recovery-oriented goals as a requirement of rehabilitation option services. In our experience, recovery refers to both a process that individuals go through as they rebuild their lives, and to the mental health treatment movement focused on promoting an individual's recovery. It includes an underlying belief that every individual can recover substantially, if not totally, and deserves access to services that support their recovery. Therefore, the goal is not just treatment of the symptoms of mental illness, but improving the lives of persons living with mental illness.

We particularly appreciate recognition of the importance of psychosocial rehabilitation (PSR) services. The last thirty years have seen the emergence of the philosophy and

principles of PSR and its importance to inform systems and services. The presence (or absence) of psychosocial rehabilitation services directly impacts the achievement of recovery-oriented outcomes.

Below are our specific comments to the proposed regulations:

#### **A. Definitions. Restorative Services: 440.130 (d) (1) (vi)**

This section stipulates that restorative services are those that enable an individual to perform a function, and that the individual does not have to have actually performed the function in the past. This language is critical, as loss of function may have occurred long before restorative services are provided.

This definition also includes as appropriate rehabilitative services designed to maintain current level of functioning, but only when necessary to help an individual achieve a rehabilitation goal. While we do not believe that rehabilitative services should be custodial, for people with serious mental disabilities continuation of rehabilitative services is, at times, essential to retaining their functioning level. Failure to provide a supportive level of rehabilitation would result in deterioration, necessitating a reinstatement of intensive services.

Section 1901 of the statute specifically authorizes funds for “rehabilitation and other services” to help individuals “retain” capability for independence and self-care. This provides authority for CMS to allow states to furnish services that will maintain an individual’s functional level.

**CMHDA Recommendation:** Further clarify that a child or adult need not demonstrate that he or she was once capable of performing a specific task in the past if it was not possible (due to disability) or age-appropriate for the child to have done so.

Also, revise the definition of when services may be furnished to maintain functioning to include as an acceptable goal of a rehabilitation plan the retaining of functional level for an individual who can be expected to otherwise deteriorate.

#### **C. Written Rehabilitation Plan: 440.130 (d) (3)**

We support the new requirement that covered rehabilitative services for each individual be identified in a written rehabilitation plan with recovery goals. We also support the purposes outlined for this plan, including the service coordination and coverage, and service transparency for beneficiaries and their identified supports.

**CMHDA Recommendation:** Provide states with additional guidance and clarification related to the important acknowledgement that “...rehabilitation goals are often contingent on the individual’s maintenance of a current level of functioning” by changing the following language:

“In these instances, services that provide assistance in maintaining functioning ~~may be~~ **are** considered rehabilitative only when necessary to help an individual achieve a rehabilitative goal as defined in the rehabilitation plan.”

#### **D. Impairments to be Addressed**

A general comment related to this section is that the emphasis on impairment is inconsistent with the basic tenets of the previous section's emphasis on recovery goals.

**CMHDA Recommendation:** Add additional language to this section that acknowledges the President's New Freedom Commission on Mental Health's promotion of a recovery focus in the treatment of mental illness.

**F(1). Requirements and Limitations for Rehabilitative Services: 441.45(a) (2), (a) (3) and (a) (4).**

The requirements for documentation outlined in these requirements should acknowledge that services that provide assistance in maintaining functioning are considered rehabilitative when necessary to the achievement of a rehabilitative goal.

**Rehabilitative Services: 441.45 (a) (2)**

This section limits rehabilitative services to those furnished for the maximum reduction of physical or mental disability and restoration of the individual to the best possible functional level, as defined in law. However, it would be helpful to reiterate here when services may be furnished to retain or maintain functioning.

It would also be useful to include the language in the preamble (page 45204) regarding how to determine whether a particular service is a rehabilitation service, based on its purpose.

**CMHDA Recommendation:** Add language in 441.45 (a) (2) to describe when services may be furnished with the goal of retaining or maintaining functioning.

Insert additional language into this section (from preamble) to state that it is helpful to scrutinize the purpose of the service as defined in the rehab plan in order to determine whether a specific service is a covered rehabilitative benefit.

In 441.45 (a) (3) and (a) (4) add the following language:

"We also propose to require that the provider document the following for all individuals receiving rehabilitative services:

The progress made toward functional improvement **or maintenance of functioning consistent with the** attainment of the individual's rehabilitation goals."

**F(2). Limitations for Rehabilitation Services: "Intrinsic Elements": 441.45 (b).**

This section introduces a whole new concept into Medicaid. It denies Medicaid coverage for covered services to covered individuals if such services are furnished through another program, including when they are considered "Intrinsic elements" of that program. The regulation needs to clarify how this provision would be applied and how to determine whether a program is an "Intrinsic element" of another program.

**CMHDA Recommendation:** The section should be clarified and narrowed to focus on situations where an entity (e.g. an insurer) has a specific legal obligation to pay for the services for the specific Medicaid-covered individuals. Programs operated through capped or discretionary appropriations from states or localities should be specifically excluded. We suggest the following definition: "*Intrinsic services are those that are the major focus of another agency based on their statutory requirements. This definition is*

*NOT meant to preclude funding of services under the rehabilitation option which may mirror those by another agency (e.g., housing, employment) and are provided pursuant to an approved rehabilitation plan as defined in these regulations.”*

Finally, to the extent that any of these proposals become final, it is imperative that CMS work with states to develop implementation timelines that allow sufficient time for legislative review of waivers in states where this is necessary, as well as adequate time for administrative and programmatic changes at the state, county, and provider agency level. The development of new forms, staff training, and administrative processes all pose significant challenges at all levels. At a minimum, CMS should grant states a one-year planning and implementation period from the time of approval of the state plan amendment by CMS.

Thank you for the opportunity to comment on the proposed regulation. If you need additional information, please contact me at (916) 556-3477, ext. 108.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Ryan". The signature is fluid and cursive, with a large initial "P" and "R".

Patricia Ryan

Executive Director

Cc: Members, California Congressional Members

The Honorable Arnold Schwarzenegger, Governor of the State of California

Stephen W. Mayberg, PhD, Director, State Department of Mental Health

Kelly Brooks, CSAC

Ellen Whittman, NACBHDD