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DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

DATE: February 26, 2019

MHSUDS INFORMATION NOTICE NO.: 19-007

TO: COUNTY BEHAVIORAL HEALTH DIRECTORS
COUNTY DRUG & ALCOHOL ADMINISTRATORS
COUNTY BEHAVIORAL HEALTH DIRECTORS ASSOCIATION OF CALIFORNIA
CALIFORNIA COUNCIL OF COMMUNITY BEHAVIORAL HEALTH AGENCIES
COALITION OF ALCOHOL AND DRUG ASSOCIATIONS
CALIFORNIA ASSOCIATION OF ALCOHOL & DRUG PROGRAM EXECUTIVES, INC.
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES
CALIFORNIA OPIOID MAINTENANCE PROVIDERS
CALIFORNIA STATE ASSOCIATION OF COUNTIES
CALIFORNIA CONSORTIUM OF ADDICTION PROGRAMS AND PROFESSIONALS

SUBJECT: MENTAL HEALTH PLAN AND COUNTY MENTAL HEALTH DEPARTMENT PROVISION OF MENTAL HEALTH SERVICES FOR COUNTY PROBATION AND JAIL, PAROLE, AND POST RELEASE COMMUNITY SUPERVISION POPULATIONS

PURPOSE

The purpose of this Department of Health Care Services (DHCS) Mental Health and Substance Use Disorder Services (MHSUDS) Information Notice (IN) is to provide guidance and clarification to Mental Health Plans (MHPs) and county mental health departments about their responsibility regarding Specialty Mental Health Services (SMHS) and/or services funded by the Mental Health Services Act (MHSA) for individuals who are on county probation, Post-Release Community Supervision (PRCS), in a county jail, or on parole.

BACKGROUND

Medi-Cal Eligibility

Medi-Cal eligibility is determined based on several factors, and beneficiaries are assigned aid codes that reflect the basis by which they qualify for Medi-Cal and their scope of coverage. MHPs are responsible for submitting claims for Medi-Cal reimbursement of SMHS and should check beneficiaries' aid codes to determine if SMHS are included in a beneficiary's scope of coverage. The Short Doyle Medi-Cal Master Aid Code Chart on the DHCS website:

<http://www.dhcs.ca.gov/services/MH/Pages/MedCCC-Library.aspx> provides a comprehensive list of Medi-Cal aid codes that include SMHS in their scopes of coverage.

Under the Affordable Care Act (ACA), states are authorized to expand Medicaid, effective January 1, 2014, to cover many low-income individuals under age 65 who were previously ineligible for Medicaid coverage. Whereas some probationers, individuals on PRCS, parolees, and county jail inmates may not have been eligible for Medi-Cal coverage prior to the ACA, many are now eligible.

Medi-Cal Specialty Mental Health Services

SMHS are authorized pursuant to a waiver approved by the Centers for Medicare and Medicaid Services under Section 1915(b) of the Social Security Act. Under the Medi-Cal SMHS Waiver, MHPs must ensure the provision of Medi-Cal SMHS, as described in California's Medicaid State Plan and Title 9, California Code of Regulations (CCR), Section 1810.247, to all Medi-Cal beneficiaries who meet medical necessity criteria (CCR, tit. 9, § § 1810.100, 1820.205, 1830.205, 1830.210). SMHS include mental health services, medication support, services, day treatment intensive, day rehabilitation, crisis intervention, crisis stabilization, adult residential treatment services, crisis residential treatment services, psychiatric health facility services, psychiatric inpatient hospital services, and targeted case management. Intensive care coordination, intensive home based services, therapeutic behavioral services, and therapeutic foster care are SMHS available to children and youth under the age of 21.

The Mental Health Services Act

California voters passed the MHSA in 2004. MHSA is funded by a one percent income tax on personal income in excess of \$1 million per year. The MHSA is designed to expand and transform California's mental health systems to better serve individuals with and at risk of serious mental health issues, and their families. The MHSA addresses a broad continuum of prevention, early intervention, and service needs, and the necessary infrastructure, technology and training elements to support the system.

The State Controller's Office distributes MESA funds to counties on a monthly basis (Welfare & Institutions Code (W&I), § 5891(c)). Counties spend the funds on five components: Community Services and Support; Prevention and Early Intervention; Innovation; Capital Facilities and Technological Needs; and Workforce Education and Training (W&I § 5892(a), (b)). The MESA requires each county mental health department to prepare and submit a Three-Year Program and Expenditure Plan and Annual Update to DHCS and the Mental Health Services Oversight and Accountability Commission (W&I § 5847.) The plans and updates are subject to a community planning process that includes stakeholder involvement and approval by the county board of supervisors (W&I § 5848).

Public Safety Realignment

Public Safety Realignment was enacted through Assembly Bill 109 in 2011 (Chapter 15, Statutes of 2011). Public Safety Realignment mandates that individuals sentenced to non-serious, non-violent or non-sex offenses serve their sentences in county jails instead of state prisons. Along with Public Safety Realignment, the Post-Release Community Supervision Act of 2011 (Pen. Code, §§ 3450-3465) established PRCS. Under PRCS, on and after October 1, 2011, certain individuals released from State prison are subject to community supervision by county probation departments. PRCS is not available for some individuals, such as those who committed a serious or violent felony, high-risk sex offenders, or individuals required to undergo treatment at a State Hospital.

POLICY

Medi-Cal Specialty Mental Health Services

MHPs are required to provide or arrange for the provision of SMHS to beneficiaries in their counties who meet SMHS medical necessity criteria, consistent with the beneficiaries' mental health treatment needs and goals as documented in the beneficiaries' client plans (W&I § 14684). Medi-Cal beneficiaries in need of SMHS may self-refer to the MHP for an assessment, or they may be referred from a variety of sources, such as a primary care physician, law enforcement, or county social services departments.

Federal Financial Participation is not available for individuals who are inmates of public institutions (42 C.F.R., §§ 435.1009, 435.1010). MHPs are therefore prohibited from claiming Federal Financial Participation for providing SMHS to county jail inmates, except for psychiatric inpatient hospital services and psychiatric hospital professional services provided off the grounds of the correctional facility, as specified in MHSUDS IN 15-029 and All County Welfare Directors Letters No. 11-27, 13-18, 14-26, and 14-26E.

Parolees, probationers, and individuals on PRCS are not inmates (42 U.S.C. § 1396d(a)(29)(A); W&I § 14011.10.). Therefore, Medi-Cal beneficiaries on county probation, parole, or on PRCS are entitled to receive SMHS if they meet medical necessity criteria and SMHS are needed to address the beneficiary's mental health needs and goals as documented in the beneficiary's client plan. A Medi-Cal beneficiary's entitlement to receive SMHS applies regardless of whether the beneficiary is currently receiving mental health services through the state parole system. MHPs are required to identify appropriate funding sources for Certified Public Expenditures, e.g. for parolees, MHPs could utilize realignment funds.

As noted in MHSUDS IN 13-01 (<https://www.dhcs.ca.gov/formsandpubs/Documents/13-01.pdf>), the MHPs responsibility to provide SMHS has not changed under 2011 Public Safety Realignment.

The Mental Health Services Act

MHSA funded services are not available for parolees or individuals incarcerated in state or federal prisons (CCR, tit. 9, § 3610, subd. (f).) PRCS program participants are supervised by county probation departments, and thus are not considered parolees (*People v. Steward* (2018) 20 Cal. App. 5th 407, 418). Since individuals who are on PRCS are no longer incarcerated in a State prison and are not parolees, they are eligible for services funded by the MHSA as long as all other MHSA requirements are met.

If included in the Community Services and Supports component of their Three-Year Program and Expenditure Plans, which is subject to a local stakeholder planning process and Board of Supervisors approval, counties may use MHSA funds to pay for mental health services for individuals who are on county probation, including PRCS, and for mental health services that are provided to facilitate discharge for mentally ill offenders incarcerated in a county jail or a juvenile detention facility (W&I § 5813.5, subd. (f); CCR tit. 9, § 3610, subd. (g).).

In situations where MHSA funds are not allowed to be used to provide services for an individual, counties must ensure that MHSA is not used as the non-federal funding source while still providing SMHS to Medi-Cal eligible beneficiaries.

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QUESTIONS

Questions regarding the content of this IN may be directed to DHCS' Mental Health Services Division's County Support Unit. A current list of County Support Liaison assignments can be found at

<http://www.dhcs.ca.gov/services/MH/Pages/CountySupportUnit.aspx>.

Sincerely,

Original signed by

Brenda Grealish, Acting Deputy Director
Mental Health & Substance Use Disorder Services

