King County

Metropolitan King County Council

Regional Policy Committee

Staff Report

Agenda Item No.:	6	**Name:**	Beth Mountsier
Briefing No.:	2013-B0117	**Date:**	August 14, 2013
Attending:	Amnon Shoenfeld, Director, Mental Health, Chemical Abuse and Dependency Services Division, Department of Community and Human Services David M. Johnson, Ed.D., Navos CEO		

SUBJECT

An overview and potential response to the Federal notice that Washington State's payment system for mental-health services violates federal procurement laws.

SUMMARY

This briefing is intended to provide background information and a status report regarding update about what is happening in response to the letter to the State of Washington from the Center for Medicare and Medicaid Services[1] (CMS) which announced that the federal government has deemed that the State of Washington's process for procurement of Regional Support Network (RSN) administration services is "invalid" (Attachment 1).

There is conjecture about why this has happened, and why it happened now. But apparently there has been an ongoing examination by the U.S. Government Accountability Office (GAO) regarding how states administer their mental health systems. This has been a several year process initiated by GAO and the Inspector General examining Centers for Medicare & Medicaid Services (CMS) practices. Vermont and Pennsylvania were identified first for violating

[1] The Centers for Medicare & Medicaid Services (CMS), previously known as the Health Care Financing Administration (HCFA), is a federal agency within the United States Department of Health and Human Services (DHHS) that administers the Medicare program and works in partnership with state governments to administer Medicaid, the State Children's Health Insurance Program (SCHIP), and health insurance portability standards. In addition to these programs, CMS has other responsibilities, including the administrative simplification standards from the Health Insurance Portability and Accountability Act of 1996 (HIPAA), quality standards in long-term care facilities (more commonly referred to as nursing homes) through its survey and certification process, and clinical laboratory quality standards under the Clinical Laboratory Improvement Amendments.

this competitive bid process in the same manner that Washington is now identified as not being competitive enough.

It is stated in the Washington State statutes governing community mental healthcare that the State gives counties the first right to opt in to run their local RSN and King County has chosen to do so. In 1994 King County started preparing for managed care and April 1, 1995 implemented the County-run RSN system.
Acting in accordance with the new CMS declaration would require the Washington State to make legislated changes. CMS recognizes that the State will have to carry on its responsibilities and to the extent possible conduct business as usual for some time until new legislation is developed and adopted. As this is worked on in the next legislative session not only will the issue of how to procure RSN administration be debated, it is likely that questions may resurface yet again about whether there should even be RSNs instead of a single statewide system.

In the meantime, if the State were to choose to pursue a legal fight with the federal government over this finding, CMS could disapprove all of the state amendments and even stop giving federal matching dollars to the State. Such a legal battle could feasibly land at 9th District Court of Appeals. It is speculated that there is little likelihood the State will push the legal opposition far.

That leaves two likely / viable options in response to the CMS declaration: an open procurement RFP to procure mental health administration services or moving instead to a cost reimbursement model. Some professionals think it is likely that the State will employ the option of going through a more open procurement process. There seems to be little to no support for returning to a fee for service model. King County's case rate payment system is the preferred model for the future of healthcare.

BACKGROUND

The Washington State Health Care Authority oversees the state's two top health care purchasers — Medicaid and the Public Employees Benefits Board (PEBB) Program, as well as other programs. The Health Care Authority oversees eight health care programs one of which is the Medicaid and Medical Assistance Programs. Medicaid is the largest Washington State medical assistance program, providing health care coverage to approximately 1.2 million low-income Washington residents. About two-thirds of Medicaid's clients are children covered by Apple Health for Kids. Medicaid's costs are shared by the state and federal governments.

In July 2009 the DSHS Division of Alcohol and Substance Abuse and the Mental Health Division merged to become the Division of Behavioral Health and Recovery - DBHR. Through this integration, DBHR works to assess and treat patients with co-occurring mental health and substance use disorders. Their longer term vision calls for the fullest possible integration of behavioral health and primary care services under health reform, creating a person-centered health care home for all DSHS clients, to meet all of their health needs.

With community, state and national partners, DBHR provides evidence-based, cost-effective services that support the health and well-being of individuals, families and communities in Washington State. During the economic downturn, DBHR was able to demonstrate the economic, social, and health benefits that result from providing quality behavioral health services, which far outweigh the costs of providing the services These benefits include lower crime and criminal justice-related costs, lower medical costs, less reliance on public assistance,

higher rates of employment and worker productivity, fewer children in need of foster care, and lower school dropout rates (see http://www.dshs.wa.gov/pdf/dbhr/BH%20Redesign.pdf).

The Division of Behavioral Health and Recovery contracts with eleven Regional Support Networks (RSNs) to administer community mental health programs. Services are provided for people who are Medicaid-eligible[2]. RSNs are made up of counties or groups of counties except in Pierce where the RSN is operated by Optum Health.

The RSNs are responsible for:

- Subcontracting with licensed community mental health agencies to provide services
- Managing involuntary treatment services
- Ensuring services are provided to those with serious mental illnesses.

King County Mental Health, Chemical Abuse & Dependency Services (MHCADS) is a division of the Department of Community and Human Services. The MHCADS Division manages the mental health system in King County and serves as the RSN for King County. It is responsible for policy setting, financial management and the quality of services, as well as the responsibility for authorizing and coordinating client care. Community mental health centers contract with MHCADSD to provide a wide variety of mental health treatment and residential services.

Managed care is a system of care where access, quality of care and costs are carefully managed. Managed care within the King County Mental Health Plan[3] provides:

- An individualized assessment by a mental health professional to ensure a treatment plan that meets your needs
- Opportunity for active participation by clients and families in treatment planning, selection goals
- Culturally appropriate services
- Service coordination with other agencies or systems as necessary
- Timely access to services
- Quality of care review.

ATTACHMENTS

1. Letter from Centers for Medicare& Medicaid Services - Department of Health & Human Services to Washington State Health Care Authority, dated July 5 2013
2. News articles and opinion pieces about the federal directive regarding payment system for mental health services

[2] It is the state's arrangements with its RSNs to provide behavioral health services to Medicaid beneficiaries and the Department of Health & Human Services (HHS) regulation that limit the use of Medicaid grant funds to "allowable costs," which is at issue.

[3] The Mental Health Plan, also sometimes referred to as Prepaid Health Plan, is the state-funded managed care system of mental health services and supports.

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DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850

Disabled and Elderly Health Programs Group

JUL 05 2013

Dorothy Frost Teeter, Director
MaryAnne Lindeblad, State Medicaid Director
Washington State Health Care Authority
PO Box 45502
Olympia, WA 98504-5050

Dear Ms. Teeter and Ms. Lindeblad:

I am following up on your conversation with CMS staff. During that call, you requested specific information in writing regarding CMS' concerns about the state's arrangements with its Regional Support Networks (RSNs) to provide behavioral health services to Medicaid beneficiaries.

A Memorandum of Understanding (MOU) between the Department of Social and Health Services (DSHS) and the single State Medicaid Agency, the Health Care Authority, allows DSHS to execute contracts with the RSNs. All of these entities, including the RSNs, are governmental entities and none of these agreements are entered into through competitive processes or open procurements. CMS has identified that these arrangements, including the contracts between DSHS and the RSNs appear to be intergovernmental agreements, or subgrants, whose costs need to be determined based on the provisions of OMB Circular A-87[1].

Department of Health & Human Services (HHS) regulations at 45 C.F.R. § 92.22[2] limit the use of Medicaid grant funds to "allowable costs," which are determined in accordance with OMB Circular A-87 (A-87). For grants and subgrants with state and local governments, allowable costs under A-87 do not include profit or other increments above cost. This includes the amounts by which capitation payments paid to a governmental entity under an intergovernmental agreement or subgrant exceed costs incurred under that agreement or subgrant.

For purposes of analyzing the behavioral health contracts between the state and the RSNs, there are two critical issues:

1. Whether the RSNs which have capitated payment arrangements with DSHS, are considered local governments; and
2. Whether the arrangements are in the nature of intergovernmental agreements or subgrants to which A-87 cost principles apply.

[1] OMB Circular A-87, http://www.whitehouse.gov/omb/circulars_a087_2004
[2] http://www.gpo.gov/fdsys/pkg/CFR-2011-title45-vol1/pdf/CFR-2011-title45-vol1-sec92-23.pdf

State or Local Government Status

For purposes of A-87, local government is defined in Attachment A, paragraph B.16 as "a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government." RSNs are defined in state statute as a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region. County authorities are thus, under state law, instrumentalities of counties, and local public authorities, and fall under the definition of local government in A-87.

Application of A-87 Principles

The second point of analysis – whether A-87 cost principles apply to these arrangements with RSNs – turns on the nature of the arrangements. If the arrangements have the characteristics of a subgrant or an intergovernmental agreement, then A-87 cost principles apply. If the arrangements have the characteristics of validly procured contractual agreements, then they do not. In order for an arrangement between the state and a public entity to be considered a validly procured contract, the following elements must be in place:

- The services must be openly procured;
- All bidders must be provided the same terms for performance; and
- Rates must be set through an arms-length negotiation without any conflict of interest among the negotiators.

If these elements of a contract are not met, then an arrangement would not be considered a validly procured contract for the purpose of determining allowable costs and would be subject to the cost principles of A-87 for that purpose.

The CMS has determined, based on the information currently available, that the arrangements between DSHS and all but one of the eleven RSNs have not historically been openly procured, because the RSNs are given the right of first refusal to provide behavioral health services which means that there is no open procurement to the extent that the RSN makes that election. Therefore, when the RSN has made the election, the arrangements cannot be considered validly procured contracts. Instead, these arrangements are more in the nature of subgrants or intergovernmental agreements, and the cost principles of A-87 apply. If you do not agree with this analysis, please let me know.

The CMS has identified two options for the state in this circumstance:

1. Make these arrangements into validly procured contracts by openly procuring behavioral health services and making the RSNs compete on the same basis as any other commercial entity (including using the same basis for determining the capitation payment whether the winning bidder is the RSN or a commercial entity); or
2. Comply with A-87 principles by changing the payment methodology for these arrangements and reimburse the counties only for the costs of services actually rendered (plus administrative costs consistent with an approved cost-allocation plan) under a non-risk contract.

We recognize that changing a long-standing delivery system will take time, and potentially, state legislation. Assuming you agree with the analysis provided here, CMS is seeking the state's agreement to develop and implement a corrective action plan (CAP). While we will not specify a date certain by which the corrective action plan must be completed, we expect prompt attention to this matter, and request that the CAP be developed and submitted to CMS no later than 90 days following the date of this letter.

Once the CAP is submitted and agreed upon by CMS and the state, CMS will be able to approve the following pending actions:

- actuarial certification of a new rate range for CY 2013; and
- 11 contract amendments which extend the terms of the contracts until December 31, 2013 and which implement new rates.

To the degree that state legislation is required to implement the required changes, the request from the Health Care Authority to the legislature must be made in sufficient time to be considered in the 2014 legislative session, with the expectation that actions required to implement the system redesign will be taken immediately upon either the Authority's request being approved or the closure of the legislative session, whichever occurs first.

Please note that after CMS and the state have mutually agreed to the timeframes in your corrective action plan, failure to adhere to it could result in future deferrals or disallowances of FFP related to these contracts.

We would like to reach a mutually agreeable resolution of this issue, and look forward to working with the state to that end. Please contact Carol Peverly, Associate Regional Administrator for the Division of Medicaid and Children's Health Operations in our Seattle regional office to begin those conversations. Ms. Peverly can be reached at (206) 615-2515 or carol.peverly@cms.hhs.gov.

Sincerely,

Nancy Kelmon
for

Barbara Coulter Edwards
Director

cc: Kevin Quigley, Secretary, Department of Social and Health Services
Jane Beyer, Assistant Secretary, DSHS, Behavioral Health and Service Integration Administration
Carol Peverly, ARA, CMS Seattle Regional Office
Camille Dobson, Senior Policy Advisor for Managed Care, CMS Central Office

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ATTACHMENT 2

The Seattle Times
Winner of Nine Pulitzer Prizes

Local News

Originally published Friday, July 19, 2013 at 7:52 PM

Feds put state's mental-health system in jeopardy

Under a new federal directive, the state's longstanding mental-health system could effectively be dismantled and rebuilt. The surprise notice from the feds could put Washington's mental-health system in the hands of private insurers.

By Maureen O'Hagan

Seattle Times staff reporter

A surprise notice from the federal government could put Washington's mental-health system in the hands of private insurers, reversing 20 years of history.

The notice, which arrived earlier this month, said the state's payment system for mental-health services violates federal procurement laws. Considering it's a $500 million question — and the state has 90 days to develop a corrective plan of action — state officials are scrambling.

"To put it bluntly, this is not something we were anticipating," said Nathan Johnson, policy director at the Washington Health Care Authority. "It came out of the blue."

The counties, which administer most of the state's services for people with serious mental illness, got word of the problem last week in a conference call with state officials. After the state broke the news, "there was dead silence" among the regional officials, said Sen. Linda Evans Parlette, R-Wenatchee, majority coalition caucus chair.

Under this new federal directive, the state's longstanding mental-health system could effectively be dismantled and rebuilt. That means the counties could find themselves out of a job — an admittedly thankless one, but one that has broad implications.

"The uncertainty is rather nerve-wracking," Parlette said.

Since 1993, most services for people with serious mental illness have been managed by what are known as Regional Support Networks (RSNs). Counties have a right of first refusal to serve as the local RSN, and all but one (Pierce) have signed on for the job.

Medicaid dollars are funneled to the RSNs, which in turn can contract out for services ranging from counseling to housing support and everything in between. The RSNs receive funds based on the number of patients, making it a capitated system (payment per person, rather than a payment per service provided).

Some other states have similar systems, and the feds have approved this arrangement for years. But a federal audit of another state found a problem with it. In a July 5 letter, the federal government said the system violates federal procurement laws.

In essence, it's an accounting problem, rather than a problem with the services themselves. There are two ways to remedy it: either open the RSNs to competitive bidding or switch to a fee -for-service model.

The state is considering challenging the federal directive. At the same time, officials are examining the options. A fee-for-service model, Parlette said, would be "like going backward." The more likely scenario involves opening it up to competitive bidding from the public and private sectors — which has its own hurdles.

"It would be concerning if money is being taken out of King County to go to profit and not being used for services," said Amnon Shoenfeld, the county's director of mental-health services.

So far, no one can say how this might affect people receiving services. But they do agree on one thing: If the state does not succeed in challenging the directive, it's going to be a big deal.

Either option suggested by the feds would require a change in state law. And going through the competitive bidding process, Shoenfeld said, would be "a lot of work and a lot of money. And we've got other things to do."

Maureen O'Hagan: 206-464-2562 or mohagan@seattletimes.com

The Seattle Times
Winner of Nine Pulitzer Prizes

Editorials

Originally published Monday, July 22, 2013 at 4:08 PM

Editorial: Feds make a hash of state's mental-health system

An obscure federal auditing issue may require the state to quickly tear up its outpatient mental-health system.

Seattle Times Editorial

THE U.S. Centers for Medicaid and Medicare Services informed the state of Washington that the state's outpatient mental-health system violated federal procurement laws, as articulated in OMB Circular A-87.

Hope that didn't lose you. That accountant-speak is bone-dry.

But the consequences of the July 5 letter are huge, and will require immediate, focused attention by state officials and lawmakers.

The letter potentially requires Washington to tear up a two-decades-old county-based mental-health system and open it to competitive bidding. At more than $750 million a year, it would be one of the state's largest open bids ever for a state service, and would have broad impact on more than 135,000 mentally ill people served by the system.

All of this is just potential, because the state Department of Social and Health Services and attorney general are picking apart the legal reasoning and weighing an appeal. If not, the state needs to start responding within 90 days.

The federal agency's letter is odd because it isn't based on the quality of care, which is an open question. Its objection involves the state's capped payments to county-based Regional Support Networks, and whether those payments should be open to bidding. Again, bone-dry stuff.

This objection is doubly odd because federal regulators have signed off on the structure of Washington's outpatient system since the early 1990s. This smacks of federal bureaucracy at its worst.

But if the agency's objection holds, the Department of Social and Health Services needs to immediately work on Plan B, involving open bidding or an even more complicated process of folding the publicly funded outpatient system into existing health plans. This is a huge time-suck for mental-health staff knee-deep in an underfunded system, and also grappling with the Affordable Care Act's Medicaid expansion.

Ultimately, the Legislature would need to act. A change this big should require extensive input from mental-health advocates, patients, providers, administrators, insurers and law enforcement. All within the next six months.

What a mess. To the federal auditor who settled on this issue, thanks for nothing.

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Feds challenge Wash. mental health system

Published: August 4, 2013

By MIKE BAKER — Associated Press

OLYMPIA, Wash. — The federal government has indicated there are problems with the system Washington state uses to deliver mental health services, and officials say hundreds of millions of dollars could be at risk unless changes are made.

The Centers for Medicare & Medicaid Services said in a recent letter that state officials aren't going through a proper bidding process for regional networks. If the state doesn't change course, federal support could be pulled.

"CMS has a fair amount of power in this relationship," said Jane Beyer, assistant secretary for behavior health issues at the state Department of Social and Health Services.

Regional Support Networks in Washington administer mental health services in the state, with many counties joining together to operate within the same regional network. The idea behind the networks is to keep mental health services at the local-government level, since there is a close relationship between mental health problems and local courts, law enforcement and jails.

Democratic state Sen. Jeannie Darneille said she sees pitfalls of moving away from that model and providing open bidding. The winning provider may not be aligned with the same goals as local officials, and some regions of the state may not even draw bids.

Right now, the state is undergoing a task force review of broader issues, and Darneille wants to wait until that process has been completed before making any major changes. That may be in 2015.

"It's really incumbent on us to do it in a thoughtful way — not to rush ahead," Darneille said.

In a letter sent last month, the federal government suggested the state should have a plan to correct the system in 90 days and should change the law when lawmakers return to Olympia early next year. Darneille acknowledged that the federal government could play hard ball and demand swift change, but she believes the state can make a strong case that the process should take time.

Beyer said the state has some questions about some of the conclusions that CMS reached and wants to have a broader discussion with federal officials.

Barbara Edwards, the director of the Disabled and Elderly Health Programs Group at CMS, said the issues identified in Washington came up as part of a general review. She said the letter seeking changes was based upon the government's current understanding of Washington's system, but she noted that both sides were having conversations right now and that the state has a chance to make the case that the current system is OK.

"This is really just the beginning of a more in-depth examination of the situation," Edwards said.

Edwards emphasized that CMS recognizes the value of the programs the state provides.

"It's certainly not our intent to ever create a challenge for consumers to get the services they need," Edwards said.

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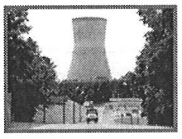

Transformer failure at Harris nuclear plant triggers emergency alert