DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
Myers	10-16-09

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER 090178	[X] Prepare reply for the Director's signature DATE DUE 11-6-09
2. DATE SIGNED BY DIRECTOR	[ ] Prepare reply for appropriate signature DATE DUE
C: Forkner Deps Cleared 11/6/09, letter attached.	[ ] FOIA DATE DUE
	[ ] Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

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1.			
2.			
3.			
4.			

From: William Wells
To: Jan Polatty
Date: 10/16/2009 9:35 AM
Subject: Re: Fwd: Financial Management Review Report (04-FS-2008-SC-01-D)

It should be logged to Felicity and copied to the other deputies. Most of the content for the response has to come from Felicity and her staff, and she is already getting them started on it, and she is also the lead on the primary corrective action which is also already in progress which is that whole rehab SPA business.

>>> Jan Polatty 10/16/2009 9:30 AM >>>
Take a look: (thanks, Jan)

RECEIVED
OCT 16 2009
Department of Health & Human Services
OFFICE OF THE DIRECTOR

Jan Polatty
Director's Office
SCDHHS
1801 Main Street
Columbia, SC 29201
803-898-2504
>>> Emma Forkner 10/15/2009 6:07 PM >>>
This will need to be logged. It will probably take a team effort to do answer this. Ask William who would be the right deputy.

Emma Forkner
Director
Department of Health and Human Services
1801 Main Street
Columbia, South Carolina 29201
(803) 898-2504
(803) 255-8338 fax

>>> "Kimble, Davida R. (CMS/CMCHO)" <Davida.Kimble@cms.hhs.gov> 10/15/2009 6:00 PM >>>

Ms. Forkner,

Please see the attached draft 2008 Financial Management Review Report (04-FS-2008-SC-01-D) on South Carolina Mental Health Rehabilitative Services. A hard copy of the report addressed to you was placed in the mail today. Please let us know if you have any questions.

Thank you,

Davida Kimble
Acting Branch Manager
Financial Management and Medicaid Systems Branch
Division of Medicaid & Children's Health Operations
Centers for Medicare & Medicaid Services
61 Forsyth Street, SW- Suite4T20
Atlanta, Georgia30303-8909

Original Log # 178

Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth St., Suite 4T20
Atlanta, Georgia 30303-8909

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

October 14, 2009

Report Number 04-FS-2008-SC-01-D

Emma Forkner, Director
South Carolina Department of
Health and Human Services
P. O. Box 8206
Columbia, SC 29202-8206

RE: Financial Management Review of South Carolina Mental Health Rehabilitative Services

Dear Ms. Forkner:

The attached draft report provides with the results of our Financial Management Review (FMR) of the South Carolina Mental Health Rehabilitative Services for the period of July 1, 2006 through June 30, 2007. We appreciate the courtesy and cooperation extended by your staff as well as the various providers visited during this process.

We ask that you respond within 30 days from the date of this letter. Your response should include any comments or additional information that you believe may have an effect on our final determination. If you concur with a finding, your comments should reflect an intended plan of corrective action. If you disagree with a finding, please indicate the basis for your disagreement. If your response is not received within 30 days, we will not be able to consider and incorporate your comments into the final report. Please safeguard the report against unauthorized use. The report is not considered to be final as it is subject to further review and revision.

To facilitate identification, please refer to Report Number 04-FS-2008-SC-01-D in any correspondence related to this report. If you have any questions or need additional information, please contact Joyce Wilkerson at 404-562-7426 or Cheryl Wigfall at 803-252-7172.

Sincerely,

Mary Kaye Justis, RN, MBA
Acting Associate Regional Administrator
Division of Medicaid and Children's
Health Operations

Enclosure
Draft Report Number 04-FS-2008-SC-01-D

Financial Management Review

SOUTH CAROLINA

MENTAL HEALTH REHABILITATIVE SERVICES

STATE FISCAL YEAR 2007

DRAFT REPORT

CONTROL NUMBER: 04-FS-2008-SC-01-D

REPORT DATE: OCTOBER 2009

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Prepared by:
Financial Management Branch 1
Division of Medicaid and Children's Health Operations
Atlanta Regional Office

Log to Feticity?

Already Logged – came in via fax – This is original to be filed w/ Log 000178

I. INTRODUCTION/BACKGROUND

Introduction

The Atlanta Regional Office (RO) of the Centers for Medicare and Medicaid Services (CMS), Division of Medicaid and Children's Health Operations, Financial Management Branch completed a Financial Management Review (FMR) of South Carolina's Mental Health Outpatient Rehabilitative Services (MHORS) that were provided by other state agencies/other providers and reimbursed by the South Carolina Department of Health and Human Services (SCDHHS) using Federal Financial Participation (FFP). SCDHHS is the single state agency responsible for administering the Medicaid program in the State of South Carolina.

Background

Title XIX of the Social Security Act (the Act) authorizes Federal grants for Medicaid programs that provide medical assistance to low income families, elderly, and persons with disabilities. Section 1902(a)(30) of the Act requires a State Plan to meet certain requirements in setting payment amounts for covered Medicaid services. One of these requirements is that payment for care and services under an approved plan are consistent with efficiency, economy, and quality of care. Although states have considerable flexibility in designing their individual State Plan, each state must comply with Federal laws and regulations in the operation of the Medicaid program in accordance with an approved State Plan. Otherwise, the state could put their FFP at risk for those services. Further, the Act requires rates for services in the State Plan to be economical and efficient; thereby prohibiting bundling of services or rates. Additionally, 42 Code of Federal Regulation (CFR) 447.201 requires the State Plan to describe the policy and the methods to be used in setting payment rates for each type of service included in the State's Medicaid program.

Under 42 CFR 430.10 authority, the State Plan should describe the nature and scope of its Medicaid program and give assurance it will be administered in conformity with the specific requirements of Title XIX and noncompliance in practice would put the state's FFP at risk.

Section 1905(i) of the Act, defines an Institution for Mental Diseases (IMD) as a hospital, a nursing facility, or an institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases. Further, Section 1905(a) of the Act, states that FFP is not available for services to residents under the age of 65 who are in an IMD.

42 CFR (440.160; Part 441, Subpart D; and Part 483, Subpart G) provide Medicaid rules that only psychiatric residential treatment facilities (PRTF) would be able to meet the conditions for participation in Medicaid for individuals under the age of 21 receiving inpatient psychiatric services.

Under SCDHHS' current approved State Plan Amendment (SPA) 07-001, Attachment 3.1-A,Limitation Supplement, page 6b, Section 13d under the heading Rehabilitative Services, the plan language specifically states, *"... the following services are considered rehabilitative services: Outpatient mental health rehabilitative services meeting standards as determined by the South Carolina Department of Health and Human Services."* On June 30, 2008, SCDHHS submitted to CMS State Plan Amendment (SPA) 08-014 to replace SPA 07-001 in order to revise current SPA language to comply with 42 CFR 447.201. Currently, this SPA is off- the-clock.

II. PURPOSE AND SCOPE

The purpose of our review was to determine whether South Carolina (MHORS) claimed during state fiscal year 2007 were reimbursed in accordance with Federal statutes, regulations and guidelines. Specifically, to determine whether:

- MHORS were eligible for Federal Financial Participation (FFP);
- MHORS were valid covered services in the State Plan;
- Claims were supported by proper documentation of service;
- Providers maintained proper case records;
- Paid claims included services that were intrinsic to programs other than Medicaid such as vocational training, foster care, education, housing, etc.

To accomplish our objective we:

- Reviewed Federal statues, regulations, and guidelines for MHORS;
- Reviewed relevant SPAs;
- Conducted interviews with State officials to gain an understanding of the State's oversight of the MHORS;
- Reviewed fee schedules for MHORS;
- Obtained, reviewed, and compared selected MHORS service procedure codes and service descriptions to the state plan;
- Obtained and reviewed provider manuals for selected MHORS;
- Identified expenditures claimed on the CMS-64;
- Conducted six provider site visits and reviewed a select sample of claims.

Our field work was performed at SCDHHS in Columbia, SC and at various provider locations in South Carolina and bordering states from December 2007 to July 2008.

III. FINDINGS AND RECOMMENDATIONS

A. Services Ineligible for Federal Financial Participation (FFP)

During our review of six facilities (providers) in conjunction with reviewing the South Carolina Medicaid State Plan for rehabilitative services, South Carolina Provider Manual, case files, and paid claims documentation, we noted several services (see table on page 3) that were paid to the providers by SCDHHS for which SCDHHS claimed FFP on the CMS 64. However, those

rehabilitative services were not in the State Plan and therefore not eligible to receive FFP. During the period of July 1, 2006 thru June 30, 2007, SCDHHS received FFP in the amount of $33,419,031 for those services (*see Table I on page 3*). Thus, SCDHHS is in violation of 42 CFR 430.10 which states:

> "The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State".

Table I:

Rehabilitative Service Description	**Code**	**Unit of Service**	**FFP 07/01/2006 - 06/30/2007[1]**
Mental Health Services Not Otherwise Specified (formerly Intensive Family Services (IFS))	H0046	15 minutes	$2,845,836
Therapeutic Foster Care (TFC)	S5145	Daily	$15,320,727
Therapeutic Behavioral Services (formerly Supervised Independent Living)	H2020	Daily	$719,419
Therapeutic Behavioral Services (formerly High/Moderate Management)	H2020	Daily	$12,739,142
Psychosocial Rehabilitation Services (formerly Clinical Day Program)	S8145	Daily	$1,501,949
Sexual Offender Treatment (formerly Specialized Treatment for Sex offenders)	H2029	Daily	$291,958
Total			**$33,419,031**

Additionally, we noted that SCDHHS did not distinctly define, describe, or identify the discrete rehabilitative services as required by 42 CFR 440.130 (d) in conjunction with 42 CFR 430.10 in their Medicaid State plan on Attachment 3.1-A pages 6.b-6c. Further, it was determined that SCDHHS' Medicaid State Plan on Attachment 4.19-B pages 6.1-6.2 for rehabilitative services does not adequately describe the payment methodology for each type of service. As such, the State did not comply with 42 CFR 447.201 which states:

> "The plan must describe the policy and the methods to be used in setting payment rates for each type of service included in the State's Medicaid program".

Under SCDHHS' current approved State Plan Amendment (SPA) 07-001, Attachment 3.1-A, Limitation Supplement, page 6b, Section 13d under the heading Rehabilitative Services, the plan language specifically states, *"... the following services are considered rehabilitative services: Outpatient mental health rehabilitative services meeting standards as determined by the South Carolina Department of Health and Human Services."* On June 30, 2008, SCDHHS submitted to CMS State Plan Amendment (SPA) 08-014 to replace SPA 07-001 in order to revise current SPA language to comply with 42 CFR 447.201. Currently, this SPA is off- the-clock.

[1] The FFP amount includes all facilities/providers during the SFY 2007.

RECOMMENDATION

We recommend SCDHHS;

(1) Provide CMS with a corrective action plan for revising SPA 08-014 such that the SPA would contain appropriate language for 3.1-A and 4.19-B pages ensuring that the services are described in a clear, distinct, and identifiable language that complies with the Federal guidelines and requirements. The SPA should also include appropriate payment methodology for each type of service that conforms to Federal guidelines. The corrective action plan for the revision of SPA 08-014 should be time limited to ensure reasonable submission of an approvable SPA. However, CMS may defer future claims on the CMS-64 until this finding is resolved.

B. Facilities Ineligible for Federal Financial Participation (FFP)

During our review of six facilities (providers) in conjunction with reviewing the South Carolina Medicaid State Plan for rehabilitative services, South Carolina Provider Manual, case files, and paid claims documentation, we noted two facilities that have more than 16 beds and are engaged in providing diagnosis, treatment, or care of persons with mental diseases. We consider those facilities to be institutions for mental diseases (IMD) and that SCDHHS should not have billed the Federal Medicaid program for services furnished to beneficiaries under the age of 65 , unless the beneficiaries were under the age of 21 and these facilities met the requirements of 42 CFR 440.160 and 42 CFR 441.151. All of the claims sampled were for beneficiaries under the age of 65.

During a further review of the SCDHHS provider listing, we discovered SCDHHS has a total of 26 facilities (see Table II below) that we consider IMDs. Additionally, we noted only one of the 26 facilities is authorized as a PRTF by the licensee agency, South Carolina Department of Health and Environmental Control (SCDHEC). SCDHHS improperly claimed FFP for services provided in 25 facilities that are deemed IMDs.

Table II:

Description of Facility	Total # of Facilities	Number of Facilities w/ 16 beds or less	Number of Facilities w/ 17 beds or more	Licensed PRTF[2]
Supervised Independent Living	7	6	1	0
Moderate Management Group Home	16	6	10	0
High Management Group Home	29	14	15	1
Total	**52**	**26**	**26**	**1**

[2] Only one facility with 17 beds or more is noted as being licensed by the South Carolina Department of Environmental Control (DHEC) as a residential treatment facility as of August 5, 2008.

SCDHHS did not comply with the following Federal laws, regulations, and guidelines that define IMD and prohibit FFP for services to residents under the age of 65 who are in an IMD:

- Social Security Act, section 1905(a) states "The term "medical assistance" means payment of part or all of the cost of the following care and services….."
- Social Security Act, section 1905 (a)(16) states "effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h)"
- Social Security Act, section 1905 (a) (28) (B) states "any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary except as otherwise provided in paragraph (16), such term does not include—(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases"
- Social Security Act, section 1905 (h)(1) states "For purposes of paragraph (16) of subsection (a), the term "inpatient psychiatric hospital services for individuals under age 21" includes only—(A) inpatient services which are provided in an institution (or distinct part thereof) which is a psychiatric hospital as defined in section 1861(f) or in another inpatient setting that the Secretary has specified in regulations"
- Social Security Act, section 1905 (h) and 42 CFR of the Code of Federal Regulations (440.160; Part 441, Subpart D; and Part 483, Subpart G) provide Medicaid rules that only psychiatric residential treatment facilities (PRTFs) would be able to meet the conditions for participation in Medicaid as institutional care
- Social Security Act, section 1905(i) states" The term "institution for mental diseases" means a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services

RECOMMENDATION

We recommend SCDHHS

(1) Comply with Federal guidelines and cease claiming FFP for those facilities that are deemed IMDs on the CMS 64.
(2) Establish proper edits to their Medicaid Management Information System (MMIS) to ensure that these facilities are not reimbursed using FFP.
(3) Provide CMS with a corrective action plan to resolve these findings; failure to comply may place FFP at risk.

C. Bundled Rates/Services

During our review of six facilities in conjunction with reviewing the South Carolina Medicaid State Plan for rehabilitative services, South Carolina Provider Manual, case files, and paid claims documentation, we determined that the SCDHHS uses bundled payments to reimburse for the services listed below (Table III). Specifically, SCDHHS uses bundled rates that appear to reimburse at the same payment level regardless of the types of services provided, the types of practitioners who provide the service, or the number of services received by a beneficiary. CMS policy prohibits the use of bundled payment rates for non-institutional services because such rates violate the requirements of Section 1902(a)(30)(A) and 1902(a)(32) of the Act.

Table III:

Rehabilitative Service Description	Code	Unit of Service
(1) Mental Health Services Not Otherwise Specified (formerly Intensive Family Services (IFS))	H0046	15 minutes
(2) Therapeutic Foster Care (TFC)[3]	S5145	Daily
(3) Therapeutic Behavioral Services[3] (formerly Supervised Independent Living)	H2020	Daily
(4) Therapeutic Behavioral Services[3] (formerly High/Moderate Management)	H2020	Daily
(5) Psychosocial Rehabilitation Services (formerly Clinical Day Program)	S8145	Daily
(5) Sexual Offender Treatment (formerly Specialized Treatment for Sex offenders)	H2029	Daily

These rates are not viewed by CMS as economic and efficient, as required by 1902(a)(30)(A) of the Act. For example, the TFC daily rates are based on an annual budgeted unit of service. The unit of service is determined by averaging the annual cost of treatment based on the qualification of the lead practitioner, and the number and supervision of the foster parent. Therapeutic Behavioral Services daily rate is determined by averaging the annual budgeted costs and services utilization data for all levels of practitioner.

Additionally, the providers receiving per diem and bundled payments for rehabilitative services such as Mental Health Services Not Otherwise Specified, Psychosocial Rehabilitation Services, and Sexual Offender Treatment are not recognized under Federal statute as providers eligible to receive a direct payment. Since bundled rates are designed to make one payment for a variety of services or practitioners, the payment being made on behalf of a Medicaid qualified practitioner in their employ is not identifiable. A bundled rate does not provide for direct payment to the actual practitioners who would be providing the service and is thus not consistent with the requirements of the statute. With the exception of outpatient hospital and clinic services including services provided in a PRTF, providers recognized to provide non-institutional 1905(a) services are individual practitioners.

We also noted that these services are not defined in the State Plan on Attachment 3.1-A pages 6.b-6c nor are these services identified in the corresponding reimbursement methodology on Attachment 4.19-B pages 6.1-6.2. As such, these services may include component services which may or may not be a covered reimbursable service under the Medicaid Program. Further, it was determined that SCDHHS utilized an all inclusive rate which includes room and board for at least three of the services listed above. Room and board is not eligible for FFP for non-institutional services.

[3] Daily rate includes room and board.

It is noted that on June 30, 2008, SCDHHS submitted to CMS State Plan Amendment (SPA) 08-014 in order to revise the SPA language to comply with 1902(a)(30)(A) of the Act. Currently, this SPA is off- the-clock.

RECOMMENDATION

We recommend SCDHHS;

(1) Provide CMS with a corrective action plan for revising SPA 08-014 such that the SPA would contain appropriate language for 3.1-A and 4.19-B pages for rehabilitative services to identify services with language that complies with Federal guidelines and requirements. At a minimum, the unbundled rehabilitative services should be descriptive enough to meet CMS' current definition requirements, including provider qualifications, specific limitations that support proper administration, implementation, and utilization. The SPA should also include an acceptable payment methodology to assure that payments are consistent with efficiency and economy.
(2) However, CMS may defer future claims on the CMS-64 until this finding is resolved.

Log 178

State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Emma Forkner
Director

November 6, 2009

Mary Kaye Justis, RN, MBA
Acting Associate Regional Administrator
Division of Medicaid and Children's Health Operations
Centers for Medicare & Medicaid Services
61 Forsyth Street, Suite 4T20
Atlanta, Georgia 30303-8909

Dear Ms. Justis:

We are in receipt of your draft report number 04-FS-2008-SC-01-D with the results of your Financial Management Review (FMR) of South Carolina's Mental Rehabilitative Services for the period of July 1, 2006 through June 30, 2007.

Attached please find the State's response to the draft report. We appreciate the opportunity to respond to the report and believe you will be very satisfied with the progress already made by South Carolina toward addressing the concerns raised in the report.

We appreciate the assistance offered by your staff as South Carolina has taken steps to amend our policy and the acknowledgement by your staff of our efforts and we look forward to receipt of the final report. Should you have any questions or concerns, please contact Felicity Myers, at 803-898-2803.

Sincerely,

Emma Forkner
Director

EM/jp
Attachments

04-FS-2008-SC-01-D

CMS FINDING

A. Services Ineligible for Federal Financial Participation (FFP)

During our review of six facilities (providers) in conjunction with reviewing the South Carolina Medicaid State Plan for rehabilitative services, South Carolina Provider Manual, case files, and paid claims documentation, we noted several services (see table on page 3) that were paid to the providers by SCDHHS for which SCDHHS claimed FFP on the CMS 64. However, those rehabilitative services were not in the State Plan and therefore not eligible to receive FFP. During the period of July 1, 2006 thru June 30, 2007, SCDHHS received FFP in the amount of $33,419,031 for those services (*see Table I on page 3*). Thus, SCDHHS is in violation of 42 CFR 430.10 which states:

> "The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State".

Additionally, we noted that SCDHHS did not distinctly define, describe, or identify the discrete rehabilitative services as required by 42 CFR 440.130 (d) in conjunction with 42 CFR 430.10 in their Medicaid State plan on Attachment 3.1-A pages 6.b-6c. Further, it was determined that SCDHHS' Medicaid State Plan on Attachment 4.19-B pages 6.1-6.2 for rehabilitative services does not adequately describe the payment methodology for each type of service. As such, the State did not comply with 42 CFR 447.201 which states:

> "The plan must describe the policy and the methods to be used in setting payment rates for each type of service included in the State's Medicaid program".

Under SCDHHS' current approved State Plan Amendment (SPA) 07-001, Attachment 3.1-A, Limitation Supplement, page 6b, Section 13d under the heading Rehabilitative Services, the plan language specifically states, *"... the following services are considered rehabilitative services: Outpatient mental health rehabilitative services meeting standards as determined by the South Carolina Department of Health and Human Services."* On June 30, 2008, SCDHHS submitted to CMS State Plan Amendment (SPA) 08-014 to replace SPA 07-001 in order to revise current SPA language to comply with 42 CFR 447.201. Currently, this SPA is off- the-clock.

STATE RESPONSE

Until CMS expressed concerns about the language in South Carolina's State Plan regarding Rehabilitative Services, the State was functioning under the understanding that it was providing rehabilitative services in accordance with 42 CFR 430.10. Additionally, the State believed that the language in its approved State plan adequately

described the payment methodology for the types of services claimed and thereby satisfied the requirements of 42 CFR 447.201. In May, 2004, CMS identified its concerns about the language in our State Plan, as evidenced by the letter from Patricia Harris for Rose Crum-Johnson dated June 24, 2004(Attachment A). In response, the State initiated regularly scheduled conference calls with the CMS Regional Office (RO) to develop a plan for revision to the State Plan. CMS RO staff recommended that the State amend the Rehabilitative Services Section of the State Plan incrementally, beginning with the EPSDT Children's Rehabilitative Services. Additionally, CMS RO recommended that work on the Mental Health Rehabilitative Services begin following approval of the EPSDT Children's Rehabilitative State Plan Amendment, as evidenced by the attached emails (Attachment B). The EPSDT Children's Rehabilitative Services State Plan Amendment was initially submitted as SPA 05-006 on 4/28/05 and approved on 7/7/06. Further amendment to these services was made through SPA 07-001 submitted on 3/14/07 and approved on 10/23/07. Immediately after approval of this SPA at the end of October, 2007, the State initiated discussions with RO regarding the Mental Health Rehabilitation Services SPA. The State has continued to work with CMS RO and CO over the last two years to add the level of specificity for the discrete services desired by CMS.

Based on direction from CMS RO, the state submitted the 3.1-A section of this SPA on 6/30/08 as SPA 08-014, with the understanding that a complete SPA would follow. During this time period both program and reimbursement staff have worked with CMS CO and RO to ensure that the service descriptions, provider qualifications and reimbursement methodology were in compliance with federal guidelines. There has been extensive interaction with public and private providers regarding the "provider contracting" option for reimbursement; these discussions were essential, but significantly slowed the development of the final services and rates. The State intends to submit its revised SPA to CMS for approval by November 30, 2009.

CMS FINDING

B. Facilities Ineligible for Federal Financial Participation (FFP)

During our review of six facilities (providers) in conjunction with reviewing the South Carolina Medicaid State Plan for rehabilitative services, South Carolina Provider Manual, case files, and paid claims documentation, we noted two facilities that have more than 16 beds and are engaged in providing diagnosis, treatment, or care of persons with mental diseases. We consider those facilities to be institutions for mental diseases (IMD) and that SCDHHS should not have billed the Federal Medicaid program for services furnished to beneficiaries under the age of 65 , unless the beneficiaries were under the age of 21 and these facilities met the requirements of 42 CFR 440.160 and 42 CFR 441.151. All of the claims sampled were for beneficiaries under the age of 65.

During a further review of the SCDHHS provider listing, we discovered SCDHHS has a total of 26 facilities (see Table II below) that we consider IMDs. Additionally, we noted

only one of the 26 facilities is authorized as a PRTF by the licensee agency, South Carolina Department of Health and Environmental Control (SCDHEC). SCDHHS improperly claimed FFP for services provided in 25 facilities that are deemed IMDs.

SCDHHS did not comply with the following Federal laws, regulations, and guidelines that define IMD and prohibit FFP for services to residents under the age of 65 who are in an IMD:

- Social Security Act, section 1905(a) states "The term "medical assistance" means payment of part or all of the cost of the following care and services….."
- Social Security Act, section 1905 (a)(16) states "effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h)"
- Social Security Act, section 1905 (a) (28) (B) states "any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary except as otherwise provided in paragraph (16), such term does not include—(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases"
- Social Security Act, section 1905 (h)(1) states "For purposes of paragraph (16) of subsection (a), the term "inpatient psychiatric hospital services for individuals under age 21" includes only—(A) inpatient services which are provided in an institution (or distinct part thereof) which is a psychiatric hospital as defined in section 1861(f) or in another inpatient setting that the Secretary has specified in regulations"
- Social Security Act, section 1905 (h) and 42 CFR of the Code of Federal Regulations (440.160; Part 441, Subpart D; and Part 483, Subpart G) provide Medicaid rules that only psychiatric residential treatment facilities (PRTFs) would be able to meet the conditions for participation in Medicaid as institutional care
- Social Security Act, section 1905(i) states" The term "institution for mental diseases" means a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services

STATE RESPONSE

The State has completely resolved issues that resulted in this finding. The State no longer claims FFP for any non-institutional residential facilities that could be considered an IMD, to include those identified in the draft report. For Therapeutic Behavioral Health Services (High Management, Moderate Management, and Supervised Independent Living), we transitioned to 100% State funding for these facilities over an 18 month period, beginning August 1, 2007 and ending December 31, 2008. As indicated in the Medicaid Bulletin dated July 24, 2007, the State reduced the treatment rate for these facilities by 45% on August 1, 2007. As evidenced by our letter to providers, dated December 19, 2008, the State ceased payment for treatment in these facilities for dates of service on or after January 1, 2009 (Attachments C & D). The State's MMIS system accurately reflects this policy and has multiple edits in place to ensure these facilities are not reimbursed for dates of service on or after January 1, 2009.

CMS FINDING

C. Bundled Rates/Services

During our review of six facilities in conjunction with reviewing the South Carolina Medicaid State Plan for rehabilitative services, South Carolina Provider Manual, case files, and paid claims documentation, we determined that the SCDHHS uses bundled payments to reimburse for the services listed below (Table III). Specifically, SCDHHS uses bundled rates that appear to reimburse at the same payment level regardless of the types of services provided, the types of practitioners who provide the service, or the number of services received by a beneficiary. CMS policy prohibits the use of bundled payment rates for non-institutional services because such rates violate the requirements of Section 1902(a)(30)(A) and 1902(a)(32) of the Act.

These rates are not viewed by CMS as economic and efficient, as required by 1902(a)(30)(A) of the Act. For example, the TFC daily rates are based on an annual budgeted unit of service. The unit of service is determined by averaging the annual cost of treatment based on the qualification of the lead practitioner, and the number and supervision of the foster parent. Therapeutic Behavioral Services daily rate is determined by averaging the annual budgeted costs and services utilization data for all levels of practitioner.

Additionally, the providers receiving per diem and bundled payments for rehabilitative services such as Mental Health Services Not Otherwise Specified, Psychosocial Rehabilitation Services, and Sexual Offender Treatment are not recognized under Federal statute as providers eligible to receive a direct payment. Since bundled rates are designed to make one payment for a variety of services or practitioners, the payment being made on behalf of a Medicaid qualified practitioner in their employ is not identifiable. A bundled rate does not provide for direct payment to the actual practitioners who would be providing the service and is thus not consistent with the requirements of the statute. With the exception of outpatient hospital and clinic services including services provided in a PRTF, providers recognized to provide non-institutional 1905(a) services are individual practitioners.

We also noted that these services are not defined in the State Plan on Attachment 3.1-A pages 6.b-6c nor are these services identified in the corresponding reimbursement methodology on Attachment 4.19-B pages 6.1-6.2. As such, these services may include component services which may or may not be a covered reimbursable service under the Medicaid Program. Further, it was determined that SCDHHS utilized an all inclusive rate which includes room and board for at least three of the services listed above. Room and board is not eligible for FFP for non-institutional services.

STATE RESPONSE

The State does not completely concur with the findings of Section C of the draft report. The State has never used an all-inclusive rate that includes room and board for any non-institutional residential service for which FFP was claimed. We have attached a description of the rate methodology for these programs which clearly delineates how rates were established and, furthermore, that room and board costs were excluded from the treatment rate (Attachment E). As stated previously, the State has ceased drawing down federal funds for the Therapeutic Behavioral Health Services (High Management, Moderate Management, and Supervised Independent Living) for dates of service on or after January 1, 2009.

Furthermore, the State has begun to transition away from federal funding for Therapeutic Foster Care Services; this process will be done in two stages just as the transition away from the use of federal funds for group care facilities was done in two phases. As indicated in the Medicaid Bulletin dated July 9, 2009, the State reduced the treatment rate for Therapeutic Foster Care Services by 25% on August 1, 2009 (Attachment F).The State intends to cease federal reimbursement for Therapeutic Foster Care Services on July 1, 2010.

The State continues to work closely with CMS RO and CO policy and reimbursement staff to revise SPA 08-014 and insure that it contains appropriate language for 3.1-A and 4.19-B for rehabilitative services. Based on guidance received from CMS staff, the State has clearly defined each discrete service, provider qualifications, and reimbursement methodology.

The State intends to submit a completed SPA document to CMS for approval by November 30, 2009. Upon approval from CMS, the State intends to discontinue the services identified in the draft report and proposes to implement a system that makes payments to individual providers based on the discrete service being provided and on the qualifications of the practitioner providing the service. The State has been working with public and private providers over the last several years to prepare them for this transition.

ATTACHMENT A

Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth Street, Suite 4T20
Atlanta, Georgia 30303-8909

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

June 24, 2004

Mr. Robert Kerr, Director
Department of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29202-8202

Dear Mr. Kerr:

The Regional Office has become aware that the South Carolina Department of Health and Human Services (DHHS or the State Medicaid Agency, SMA) may be at risk for disallowance for certain services provided through its EPSDT Children's Rehabilitation Services program. The purpose of this letter is to explain the issue and offer guidance on how DHHS can avoid a disallowance.

DHHS is providing services through its EPSDT Children's Rehabilitative Services that are not described in the Title XIX State Plan, specifically, the SMA's coverage of mobility and orientation services. Federal regulations at § 430.10 describes the State plan as:

> ... a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

The failure of the South Carolina Medicaid Agency to provide sufficient information in its State Plan has lead to the Medicaid Agency providing coverage for services that do not meet the requirements for Medicaid. As we informed SC DHHS staff in a call on May 5, 2004, subsequent e-mail messages, another call on June 14, 2004, and a call to you before we sent this letter, mobility and orientation services are not medical, but educational. Therefore, the cost of the services is not eligible for FFP. In order to avoid a disallowance, we recommend that the SMA:

1. Discontinue the coverage of mobility and orientation services.

2. In the July 2004 quarter, collaborate with CMS staff to submit a revised State Plan Amendment (SPA) that provides a complete description of the services provided under its EPSDT Children's Rehabilitative Services program. In addition to describing each service,

the SPA should delineate the provider qualifications and payment methodology for each service.

I trust that the information provided in this letter assists the State in avoiding a disallowance. Should you decide to continue mobility and orientation services or to not submit a SPA to revise this section of the State Plan, this letter further serves as formal notice that we may withhold Federal financial participation (FFP) beginning with the October Quarter (calendar year 2004).

For questions or additional information, please contact Dr. Renard L. Murray, Associate Regional Administrator, Division of Medicaid and Children's Health, at (404) 562-7175 or Ms. Cathy Kasriel at (404) 562-7411.

Sincerely,

Signed by Patricia Harris for

Rose Crum-Johnson
Regional Administrator

cc: Ms. Charlene Brown, Deputy Director, Center for Medicaid and State Operations

From: "Elmore, Elaine (CMS/SC)" <elaine.elmore@cms.hhs.gov>
To: "Felicity Myers" <MYERSFC@scdhhs.gov>, "Cynthia Higgins" <Higgins@scdhhs.gov>, "Jean McDaniel" <MCDANLJC@scdhhs.gov>, "Mary Cooper" <COOPMARY@scdhhs.gov>, "Singleton, Deirdra" <Singled@dhhs.state.sc.us>
Date: Tue, Sep 11, 2007 10:30 AM
Subject: Answers to Quest. 7, 8, & 9 of CMS 8-31-07 Follow Up Questions

Hi Felicity,

Following up on our telephone call this morning concerning the State's answers to CMS' questions No. 7, 8, and 9 of the Follow-Up Coverage Questions (sent to SC on 8/31/07) the State's Answers dated 7/31/07, our answers are below.

Question 7. - Please place the assurance language at the bottom of Page 1b.4.e of Attachment 3.1-A.

Question 8. - Please place the language concerning FFP not being claimed for medical care provided to inmates on the same Page 1b.4.e of Attachment 3.1-A. If the information is to much for Page 1b.4.e, the State can add a new page 1b.4.f (I believe this to be correct - please check with Faye Hutto).

Question 9. - The answer to this question can be made as a response to a question. It does not go in the SPA, but in the back up documentation for the SPA.

If you have questions that need to be answered in order to process SC 07-001, please e-mail them or call me. We will try to answer them quickly, or we can talk if that is easier. We want to help you get the SPA processed as soon as possible.

At the point where we think the SPA is finished, we will let the State know, and Mary Cooper and I will try to schedule a call with CO and the RO to discuss the larger Rehab Services revisions to the SC State Plan.

Thanks.

CC: "Schervish, Marguerite (CMS/CMSO)" <Marguerite.Schervish@cms.hhs.gov>, "Reed, Maria R. (CMS/CMSO)" <Maria.Reed@cms.hhs.gov>, "Cutler, Michael (CMS/CMSO)" <Michael.Cutler@CMS.hhs.gov>, "Noonan, Darlene F. (CMS/SC)" <Darlene.Noonan@cms.hhs.gov>

From: "Elmore, Elaine (CMS/SC)" <elaine.elmore@cms.hhs.gov>
To: "Jean McDaniel" <MCDANLJC@scdhhs.gov>, "Felicity Myers" <MYERSFC@scdhhs.gov>, "Schervish, Marguerite (CMS/CMSO)" <Marguerite.Schervish@cms.hhs.gov>
Date: Fri, Oct 12, 2007 3:25 PM
Subject: FW: First Call on SC's Children's Rehab

Looks like we'll have to amend the week of 10/29/07. We should be meeting that Friday (11/2/07), but Marguerite is out of the office that day, so we'll need to find another day that week. Right now the following times are good for CMS, so SC, please let me know as soon as practicable if one of these times will be good for you.

Monday - 10/29/07 - 9:30 AM - 11:00 AM
Tuesday - 10/30/07 - 9:30 AM - 11:00 AM
Wednesday - 10/31/07 - 3:00 PM - 4:30 PM

After the above week, we have a regularly recurring schedule set up here in CMS beginning 11/16/07 - 8/8/08 every other Friday at 1:00 PM - 2:30 PM. I have a recurring audio conference line number set up for us, so we only have to remember one phone number for the entire time with one pin code. Please call 410-786-3100 and the pin code is 126557. We all understand that during the holidays of Thanksgiving and Christmas, we may have to cancel the call, and of course there may be other times as well. South Carolina, please let me know if you will be unable to attend the calls. I have only reserved five lines, so the State will need to convene in one place please. One line will be for Cheryl Wigfall, one for the RO, one for CO, and one if there is a need from time to time for someone who is not at the office.

From: Elmore, Elaine (CMS/SC)
Sent: Friday, October 12, 2007 7:18 AM
To: Schervish, Marguerite (CMS/CMSO); 'Felicity Myers'
Subject: First Call on SC's Children's Rehab

I know we said we would schedule the calls on Fridays, but I already have Friday, Oct. 26, approved to be off work. Since this would be our first call with the State, and the conversation is likely to touch on many issues, could we schedule for earlier in the week this time. Also, Marguerite, I think we have a couple of people who might be critical to these calls who work those 9-1/2 hour days and have every other Friday off. If you could check on the policy side, I'll check on the payment side. I would like to find regular Fridays where those people are in the office.

Right now in the CMS calendar, the following times look good during that week.

Tuesday - 10/23/07 - 11:00 AM - 12:30 PM
" " 2:30 PM - 4:00 PM

Wednesday - 10/24/07 - 3:00 PM - 4:30 PM

Would one of these times work for SC?

Thanks.

ATTACHMENT C

South Carolina
DEPARTMENT OF HEALTH AND HUMAN SERVICES
Post Office Box 8206
Columbia, South Carolina 29202-8206
www.scdhhs.gov

July 24, 2007

MC-DRC	*07-11*
MHRC-COC	*07-06*
MHRC-MHC	*07-11*
MHRC-MRC	*07-06*
MHRC-PMHC	*07-10*

MEDICAID BULLETIN

TO: **Residential Children's Behavioral Health Services Providers and Child Placing State Agencies**

SUBJECT: **Changes to Treatment Rates for Residential Service Providers**

The Department of Health and Human Services (DHHS) previously informed group home representatives and child placing state agencies that in order to reduce any potential liability to the state, DHHS will limit Medicaid reimbursement to existing levels of care and incrementally reduce the current per diem rate over a period of three years.

The first incremental rate reduction will take effect with dates of service beginning **August 1, 2007**. The per diem treatment rate for providers of Therapeutic Behavioral Services, formerly High and Moderate Management Group Homes and Supervised Independent Living Skills, has been reduced. Effective with dates of service on and after **August 1, 2007**, the new reimbursement rates for these services are as follows:

Therapeutic Behavioral Services High Management	**$68.00/day**
Therapeutic Behavioral Services Moderate Management	**$32.00/day**
Therapeutic Behavioral Services Supervised Independent Living	**$32.00/day**

As not to have any adverse impact on beneficiaries and providers, a new allocation of state general funds in the amount of $13,000,000 has been appropriated by the General Assembly. DHHS will allocate and transfer the $13,000,000 to child placing state agencies to offset the reduction in treatment rates. DHHS will continue to work with child placing agencies and group home representatives to explore allowable funding options that meet the criteria for Medicaid reimbursement and to implement a transition plan.

Questions regarding this bulletin should be directed to Ms. Jean C. McDaniel at (803) 898-2565. Thank you for your continued willingness to provide quality services to the children of the South Carolina Medicaid Program.

/s/

Susan B. Bowling
Acting Director

SBB/mj

NOTE: To receive Medicaid bulletins by email, please send an email to bulletin@scdhhs.gov indicating your email address and contact information.
To sign up for Electronic Funds Transfer of your Medicaid payment, please go to the following link for instructions: http://www.scdhhs.gov/dhhsnew/serviceproviders/eft.asp

ATTACHMENT D

State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Emma Forkner
Director

December 19, 2008

Dear Medicaid Provider of Children's Residential Behavioral Health Services:

The Department of Health and Human Services (DHHS), in conjunction with other state agencies, began implementation of a transition plan to reduce any potential liability to the state for children's Medicaid residential behavioral health services last year. The transition plan limits Medicaid reimbursement by incrementally reducing the current per diem treatment rate. In addition, the plan was designed to alleviate any adverse impact on beneficiaries and providers. In keeping with the plan, **effective with dates of service on or after January 1, 2009**, federal reimbursement for Therapeutic Behavioral Services, formally High and Moderate Management Rehabilitative Services and Supervised Independent Living, will no longer be available.

The General Assembly provided $13,000,000 to DHHS in fiscal year 2007-2008 as the first year of funding to offset the anticipated loss of federal funds for group home services. DHHS allocated and transferred the $13,000,000 appropriation to child placing state agencies. Following the first incremental rate reduction for residential providers, the state General Fund payment to group home services providers was increased by a like amount. In September 2008, DHHS allocated and transferred the second $13,000,000 to child placing state agencies in accordance with the transition plan. We anticipate that the child-placing agencies will continue to allocate this disbursement to residential providers to offset the reduction in treatment rates that will take effect as of January 1, 2009.

DHHS will continue to work with child placing state agencies and provider representatives to explore allowable funding options that meet the criteria for Medicaid reimbursement.

Bureau of Long Term Care and Behavioral Health Services
P. O. Box 8206 Columbia South Carolina 29202-8206
(803) 898-2590Fax (803) 255-8209

Please be reminded, Medicaid claims must be received and entered into the claims processing system within one year from the date of service to be considered for payment. It is the provider's responsibility to file claims for all outstanding accounts immediately.

Questions regarding this information should be directed to Ms. Jean C. Fowler at (803) 898-2565. Thank you for your continued willingness to provide quality services to the children of South Carolina.

Sincerely,

Sam Waldrep
Bureau Chief

SW/fj

ATTACHMENT E

Description of Reimbursement Methodologies for High Management, Moderate Management, Supervised Independent Living, and Therapeutic Foster Care Services

Therapeutic Behavioral Health Services
High Management (H2020/TG), Moderate Management (H2020/TF), Supervised Independent Living (H2020)

Effective for dates of service beginning on and after January 1, 2009, this methodology became null and void as Medicaid no longer reimburses providers for high management, moderate management, and supervised independent living services.

Treatment caps for High and Moderate Management and SIL services, provided in a residential (i.e. group home) setting were established for both state owned and private providers based on a representative sample of public and private providers' FY 1990 annual budgeted costs and service utilization data. The allowable Medicaid cost categories included in the analysis were personnel, contractual services, fixed charges, travel, and allowances for equipment. This budgeted data was reviewed for accuracy, tests of reasonableness, and conformity with allowable cost guidelines as outlined in the OMB Circular A-87. Costs associated with room and board and other personal needs (i.e. out-of-home placement) as identified on the annual/budgeted cost reports are excluded from allowable Medicaid costs. An average annual cost of treatment service was determined based on the analysis. Annual budgeted units of service, measured as a daily unit, were applied to arrive at the per day unit "cap." High Management rate caps were established at 100% occupancy level based on occupancy trends for that service while Moderate Management treatment service rate caps were established using a service trend of 90%.

High Management, Moderate Management, and Supervised Independent Living treatment service rate caps are subject to an increase if additional funding is appropriated through the annual state budget process.

Initial or new provider rates are based on the provider's budgeted costs. The provider is required to file an initial six-month actual cost report after the initial six months of operation. The provider is then adjusted to actual cost for the first six months of operation, subject to the rate caps. At the seventh month, the provider is held to a minimum occupancy factor of 90% for prospective rate determination. The budgeted rate for a new provider's first six months of operation is eligible for cost settlement for both state and private providers.

State agency Therapeutic Behavioral Health services in a residential setting are cost settled annually.

Annual cost reports are required of both state and private providers. Private providers of Therapeutic Behavioral Health services in a residential setting are eligible to submit annual actual costs of services in support of a rate increase request subject to the applicable rate cap.

Therapeutic Foster Care Services
Procedure codes: S5145, S5145/TF, S5145/TG

Fixed rates for each level of Therapeutic Behavioral Health services provided in a therapeutic foster care setting were established for both state owned and private providers based on a representative sample of private providers' FY 1990 annual budgeted costs and service utilization data. The rates for therapeutic foster care services reimburse the providers for the clinical or therapeutic component of care to the Medicaid recipient only. Three specific TFC rates were developed based on the qualifications of the lead clinical staff and on the number and supervision of the foster parents. The allowable Medicaid cost categories included in the analysis were personnel, contractual services, fixed charges, travel, and allowances for equipment. Costs associated with room and board and other personal needs as identified on the budgeted cost reports are excluded from allowable Medicaid costs. This budgeted data was reviewed for accuracy, tests of reasonableness, and conformity with allowable cost guidelines as outlined in the OMB Circular A-87. An average annual cost of treatment service was determined based on the analysis. Annual budgeted units of service, measured as a daily unit, were applied to arrive at the per day unit rate.

Therapeutic foster care rates are subject to an increase if additional funding is appropriated through the annual state budget process.

ATTACHMENT F

South Carolina
DEPARTMENT OF HEALTH AND HUMAN SERVICES
Post Office Box 8206
Columbia, South Carolina 29202-8206
www.scdhhs.gov
July 9, 2009

MHRC

MEDICAID BULLETIN

TO: **Therapeutic Foster Care Providers and Child Placing State Agencies**

SUBJECT: **Changes to Treatment Rates for Therapeutic Foster Care**

The Department of Health and Human Services (DHHS) previously informed providers of Therapeutic Foster Care (TFC) and child placing state agencies that DHHS would decrease the current per diem rate for TFC to reduce potential liability to the state.

The current per diem rates for Therapeutic Foster Care will continue until **July 31, 2009**. Effective with dates of service on and after **August 1, 2009,** the new reimbursement rates for all levels of TFC will be as follows:

Therapeutic Foster Care Level I	**$27.50/day**
Therapeutic Foster Care Level II	**$44.25/day**
Therapeutic Foster Care Level III	**$63.65/day**

In an effort to avoid any adverse impact on beneficiaries and providers, DHHS has received permanent revenue for the third and final year of the transition plan. State general funds in the amount of $13,000,000 have been appropriated by the General Assembly, with the understanding that these funds will be allocated and transferred to child placing state agencies within the first quarter of FY 2010 to offset the anticipated loss of federal funds for TFC services. Once these funds are permanently transferred to the state agencies there will be no more state funds forthcoming from DHHS for this purpose.

Questions regarding this bulletin should be directed to Sam Waldrep at (803) 898-2590. Thank you for your continued willingness to provide quality services to the children of South Carolina Medicaid Program.

/S/
Emma Forkner
Director

EF/mwj

Note: To receive Medicaid bulletins by email, please register at http://bulletin.scdhhs.gov/. To sign up for Electronic Funds Transfer of your Medicaid payment, please go to http://www.dhhs.state.sc.us/dhhsnew/hipaa/index.asp and select "Electronic Funds Transfer (EFT) for instructions.