

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
<i>Bowling</i>	<i>9-25-06</i>

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER  000268	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR  <i>cc: Mr. Terr</i> <i>See attached response</i> <i>letter. Dated 9/25/06</i>	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____  <input type="checkbox"/> FOIA DATE DUE _____  <input checked="" type="checkbox"/> 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 & Human Services  
Centers for Medicare & Medicaid Services  
61 Forsyth Street, SW, Suite 41720  
Atlanta, Georgia 30303-8909



September 19, 2006

*Los - Bowling*  
*to Rec. Action*  
*cc: Kerr*

Mr. Robert M Kerr, Director  
South Carolina Department of Health & Human Services  
P. O. Box 8306  
Columbia, South Carolina 29202-8206

Dear Mr. Kerr:

**RECEIVED**  
SEP 22 2006  
Department of Health & Human Services  
OFFICE OF THE DIRECTOR

This letter is sent in response to your letter of September 1, 2006 requesting assistance to pilot a project to provide in-home and in-school therapy services for children with Autism and Asperger's Syndrome.

The State may submit a 1915(c) Home and Community Based Waiver to include the therapy services you described. However, provision of the services in a school setting is problematic as a service in this instance, as it appears to duplicate services that should be provided under IDEA. It is also problematic with respect to comparability of services and freedom of choice of providers. We believe the alternatives mentioned in your letter fail to meet one or more of the following criteria necessary for approval by the Centers for Medicare and Medicaid Services (CMS) as described below:

1. Failure to meet the standard under §1915(c) (5) (c) that services and payment are not duplicated under the Individuals with Disabilities Education Improvement Act of 2005 or the Rehabilitation Act of 1973;
2. Comparability of services at 42 Code of Federal Regulations (CFR) § 440.240, as the State apparently intends to "target" subsets of groups with certain conditions, which is impermissible under the State plan; and
3. Freedom of Choice of Provider 42 CFR § 431.51, as the State appears to restrict providers to those who contract with or are employed by the Local Education Agency.

We would like to take this opportunity to reiterate that the optional rehabilitative services benefit in the State plan described at 42 CFR 440.130(d) states that:

... "Rehabilitative services," except as otherwise provided under this subpart, includes any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law, for maximum reduction of physical or mental disability *and restoration of* (emphasis added) a recipient to his best possible functional level.

Mr. Robert M. Kerr  
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We appreciate the efforts that you and your staff have put forth in this pilot project. If you would like to discuss the pilot project further, please contact Elaine Elmore at (404) 562-7408.

Sincerely,



Renard L. Murray, D.M.

for  
Associate Regional Administrator  
Division of Medicaid and Children's Health



*State of South Carolina*  
*Department of Health and Human Services*

Mark Sanford  
Governor

Robert M. Kerr  
Director

September 25, 2006

Roger Perez  
Regional Administrator  
Department of Health and Human Services  
Centers for Medicare & Medicaid Services  
61 Forsyth Street, SW, Suite 4T20  
Atlanta, Georgia 30303-8909

Dear Mr. Perez:

Thank you for your letter dated August 29, 2006, regarding Medicaid coverage of Applied Behavioral Therapy Service (ABTS) for autistic children.

The Department of Health and Human Services (DHHS) has been working with staff from the Centers for Medicare and Medicaid Services to determine the feasibility of transitioning the ABTS program to a 1915(c) waiver or possibly a state plan option pursuant to Section 6068 of the Deficit Reduction Act (DRA). Based on our discussions with CMS, the state plan option was ruled out based on the limitations outlined in the DRA. Subsequently, we received a letter from Renard Murray dated September 19, 2006, addressing a waiver proposal for ABTS. This letter indicated that the proposed waiver for the provision of the services in a school-based setting could not be approved based on the following:

- Failure to meet the standard that services and payment are not duplicated under the Individuals with Disabilities Education Improvement Act of 2005 or the Rehabilitation Act of 1973;
- Comparability of services as the program intends to "target" subsets of groups with certain conditions, which is not permitted under the state plan; and
- Freedom of choice of providers as the state appears to restrict providers to those who contract with or are employed by the Local Education Agency.

Based on the most recent guidance received from CMS, we are in the process of phasing out coverage of ABTS. However, we would like to request reconsideration of the December 31, 2006, effective date to allow the state adequate time to collaborate with the

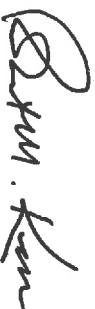
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Roger Perez  
September 25, 2006  
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local education agencies to implement a contingency plan for state funding and to avoid disruption of this vital service to one of our most vulnerable populations. We would like to discontinue ABTS effective June 30, 2007, which would coincide with the end of our state fiscal year.

Thank you for your consideration in this matter. We appreciate your assistance as we strive to meet the needs of children with autism in our state. If you have any questions, please contact Susan Bowling, Deputy Director, Medical Services, at (803) 898-2501.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. M. Kerr". The signature is fluid and cursive, with the first name "Robert" and last name "Kerr" clearly distinguishable.

Robert M. Kerr  
Director

RMK/bmmc