

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

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| TO <i>Waldrep</i> | DATE <i>12-6-12</i> |
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| DIRECTOR'S USE ONLY | ACTION REQUESTED |
|---|---|
| 1. LOG NUMBER 000167 | <input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____ |
| 2. DATE SIGNED BY DIRECTOR <i>CC: Mr. Keck, Singleton, Depts, CWS file</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
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850



Center for Medicaid and CHIP Services
Disabled & Elderly Health Programs Group

NOV 29 2012

Anthony E. Keck, Director
Office of the Director
Department of Health & Human Services
P.O. Box 8206
Columbia, South Carolina 29202-8206

RECEIVED

DEC 04 2012

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Dear Mr. Keck:

Thank you for your letter regarding the continuation of the South Carolina Department of Health and Human Services' (SCDHHS) Integrated Personal Care (IPC) Program. SCDHHS currently limits the provision of 1905(a) personal care services (PCS) to Medicaid eligible individuals residing in Community Residential Care Facilities (CRCFs). Medicaid eligible beneficiaries that require PCS and live in their homes are unable to receive the service. This is a violation of comparability in the state plan. The state must either fix comparability within 1905(a) by offering personal care services to all Medicaid eligible individuals who qualify for the benefit or submit a state plan amendment (SPA) to remove the service entirely from the state plan for adults.

In your letter, you requested further consideration by the Centers for Medicare & Medicaid Services (CMS) to permit the state to use the section 1915(i) authority for the delivery of personal care services to only those residing in CRCFs. However, this would not comport with section 1902(a)(23) of the Act, which permits an individual eligible for medical assistance to obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required. Section 1915(i) of the Act does not provide for waiver of section 1902(a)(23) of the Act. Requiring individuals to reside in CRCFs would have the effect of making the section 1915(i) SPA benefits available only to individuals residing in provider-owned settings. A state plan home and community based services benefit cannot have the impact of limiting the pool of qualified providers from which an individual would receive services, or have the impact of requiring an individual to receive services from the same entity from which they purchase their housing. Such targeting would have the impact of limiting the pool of qualified providers in violation of section 1902(a)(23) of the Act.

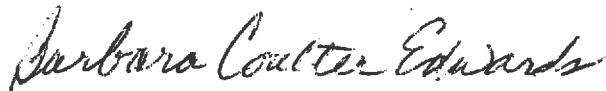
The CMS would be able to grant the state's request to terminate the IPC program for adults with an effective date of June 30, 2013 through the submission of a state plan amendment. The state is reminded that if it decides to terminate the provision of PCS under Medicaid, the state must adhere to the *fair hearings* provisions in 42 CFR 431.200 through 431.246. Compliance with the *fair hearings* provisions is required when there is a termination of Medicaid covered services through the state plan regardless of whether the state was in compliance with statute and regulation. Also, for children, through early periodic screening diagnosis and treatment, personal care services must still be provided regardless of setting, and regardless of whether the state offers PCS as an optional state plan service to adults. Please note that this guidance relates solely to bringing SCDHHS' IPC program Page into compliance with Medicaid provisions and does not in any way address the state's

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independent obligations under the Americans with Disabilities Act or the Supreme Court's *Olmstead* decision.

If you have additional questions, please contact Kathy Poisal of my staff at (410) 786-5940 or Joyce Wilkerson of the CMS Atlanta Regional Office at (404) 562-7426.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Coulter Edwards".

Barbara Coulter Edwards
Director