

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

| | |
|----------------|---------------|
| TO | DATE |
| <i>Bowling</i> | <i>9-5-06</i> |

| DIRECTOR'S USE ONLY | ACTION REQUESTED |
|---|--|
| 1. LOG NUMBER <i>000222</i> | <input checked="" type="checkbox"/> Prepare reply for the Director's signature DATE DUE <i>9-12-06</i> |
| 2. DATE SIGNED BY DIRECTOR <i>CC: Wells, Singleton, Mr. Kern cleared 9/25/06, & then attached.</i> | <input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____ <input type="checkbox"/> FOIA DATE DUE _____ <input 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 4120
Atlanta, Georgia 30303-8909

Log. Wells
"Rolling's Sign"
cc: Bowles
Kerr



August 29, 2006

RECEIVED

SEP 05 2006

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

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Dear Mr. Kerr:

It has come to our attention through our review of SC 05-006 State Plan Amendment that the South Carolina Department of Health and Human Services and the South Carolina Medicaid Agency (SMA) have been providing Applied Behavioral Therapy Services for autistic children in South Carolina. The purpose of this letter is to explain the issue and offer guidance on what the State Medicaid Agency must do in order to avoid a disallowance.

CMS Central Office staff advised the State staff in several telephone conference calls, and in writing on October 11, 2005 that those services were habilitative in nature and could not be provided as a Medicaid covered service. Since these services are not in the State Plan, CMS was not aware that South Carolina Medicaid was providing or paying for this service. 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 issues 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. 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 applied behavioral therapy services as of December 31, 2006.
2. Continue to work with CMS staff to submit the appropriate vehicle for coverage of these services under a waiver or possibly a SPA under Section 6086 of the Deficit Reduction Act.

Log. Sullivan
Wells
cc: Singletary

Mr. Robert M. Kerr

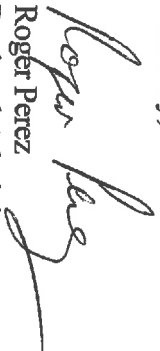
August 29, 2006

Page 2

I trust that the information provide in this letter assists the State in avoiding a disallowance. Should you decide to continue to provide applied behavioral therapy services or to not submit a SPA under Section 6086 of the Deficit Reduction Act, or secure a waiver, this letter further serves as formal notice that we may withhold Federal financial participation (FFP) beginning with the quarter ending March 31, 2007.

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. Elaine Elmore at (404) 562-7408.

Sincerely,


Roger Perez
Regional Administrator



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

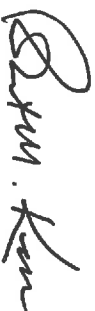
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Roger Perez
September 25, 2006
Page Two

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 "Robert M. Kerr". The signature is fluid and cursive, with the first name "Robert" being more prominent than the last name "Kerr".

Robert M. Kerr
Director

RMK/bmmc