DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Region 10
2201 Sixth Avenue, MS/RX 43
Seattle, Washington 98121

JUN 0 6 2011

Richard Armstrong, Director
Department of Health and Welfare
Towers Building, Tenth Floor
Post Office Box 83720
Boise, Idaho 83720-0036

RE: Idaho State Plan Amendment (SPA) Transmittal Number 10-017

Dear Mr. Armstrong:

This letter serves as a companion letter to our approval of Idaho State Plan Amendment (SPA) Transmittal Number 10-017 submitted on November 24, 2010. Idaho submitted this SPA to amend the amount, duration, and scope of certain services currently covered in the Basic (BBBP), Enhanced (EBBP), and Medicare/Medicaid Coordinated (MMCBBP) Benchmark Benefit Plans pursuant to legislative priorities for cost reductions (HB 701). As you are aware, the Centers for Medicare & Medicaid Services (CMS) raised several concerns during our review of SPA 10-017. CMS issued a formal request for additional information (RAI) dated February 18, 2011. The State responded on March 31, 2011. Portions of Idaho's response were not satisfactory to CMS. However, based on our current policies related to SPA review, it was determined that the outstanding issues from the RAI would not delay the approval process for SPA 10-017, but would be compiled in this companion letter.

Regulations at 42 CFR 430.10 require the State plan to be a comprehensive written statement describing the nature and scope of the State's Medicaid program and that it contain all information necessary for CMS to determine whether the plan can be approved to serve as the basis for federal financial participation (FFP) in the State program.

To that end, CMS welcomes the opportunity to work with you and your staff to discuss options for resolving the concerns outlined below:

Page 43 (EBBP) - 3.R.4. Independent School District Services

1. Section 1902(a)(23) of the Act provides that, *"Any individual eligible for medical assistance...may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required...who undertakes to provide him such services."* Services must be performed by qualified professionals operating within the scope of their practice under State law and regulations. Please describe the provider qualifications for all services listed in 3.R.4. For example, indicate that physical therapists meet the qualifications set forth in 42 CFR 440.110(a). For providers not specifically regulated by federal rule, please provide State licensure and/or education criteria as applicable.

Please clarify in the SPA language whether therapy services delivered in schools are provided under the direction of qualified therapists. If so, please further clarify in the plan how services are provided under the direction of these qualified therapists. In all cases, documentation must be kept supporting the supervision of services and ongoing involvement in the treatment.

Furthermore, the State cannot set limits on a subset of providers qualified to provide a specific State plan service, i.e., all physical therapists who meet qualification criteria and who are Medicaid providers in Idaho are subject to the same rules for State plan services.

2. Section 1902(a)(10)(b) of the Act permits states to specify the amount, duration, and scope for services in the State plan. However, limitations cannot be based on the location of a provider, e.g., school district, outpatient community setting, etc. It is unclear whether services provided in schools are consistent with Section 1902(a)(10)(b) of the Act. On page 43, under limitations for Independent School District Services, please clarify what is meant by the following language: *"School Districts are subject to the limitations for covered services. Services provided by schools do not count toward the limitations for other service providers."* Specifically, please confirm that the amount, duration, and scope of Medicaid-covered services provided in schools are also available to children in the community through non-school providers and describe how the amount, duration, and scope is comparable for <u>all</u> children regardless of where they access care.

a. Please confirm whether services delivered in schools are required to be medically necessary, and are required to be prescribed or recommended by a licensed practitioner within the scope of practice as defined under State law or regulations. In addition, please note that claims submitted for Medicaid payment must include supporting documentation. The State is responsible for ensuring that sufficient support is available to back up expenses claimed on the CMS-64 report and the format/process for how the documentation is submitted and retained.

b. Please identify each Section 1905(a) Medicaid-covered service delivered in schools. In addition, clarify in the plan that medically necessary behavioral health services (mental health assessment, psychological evaluation, psychotherapy, psychosocial rehabilitation, psychosocial evaluation) are designed to restore a recipient to his or her best possible level of functioning (per 42 CFR 440.130) and must be documented in an Individualized Education Plan (IEP)/Individualized Family Service Plan (IFSP). Also, identify the section 1905(a) Medicaid Service category under which "social history and evaluation" activities would be covered.

c. Please clarify that psychosocial rehabilitation services are available to all children in the community (outside of the school setting), and that services are not limited to only gaining skills necessary for participating at school. Please include provider qualifications as requested above. Please clarify whether psychosocial rehabilitation and psychosocial evaluations are provided by the same provider. If providers of these activities differ, please include qualifications for each.

<u>Pages 49 and 49f (EBBP)</u>

3. As outlined in Item 1 of this letter, section 1902(a)(23) of the Act governs the provision of medical assistance services by any willing and qualified provider. For the services

described on pages 49 and 49f of the EBBP titled "Developmental Disability Agency Services," and based on the language in the plan, it appears that Idaho has placed specific limitations on Developmental Disability Agency (DDA) providers. Limitations of this nature are not permissible without an approved waiver of Section 1902(a)(23).

a. Please amend page 49f by deleting the reference "by a DDA" for pharmacological management, speech language pathologists, occupational therapists, and physical therapists.

b. Consistent with the requirements of section 1902(a)(23) of the Act, please explain why the DDA is the only qualified provider of the specified rehabilitation services, i.e., Pharmacological Management, Speech, Physical and Occupational Therapy, and explain why allowing other non-DD providers to provide rehabilitative services to Medicaid beneficiaries would be ineffective and inefficient.

Page 49 (EBBP)—Intensive Behavioral Intervention (IBI)

4. Section 1905(r) of the Act requires that, *"...necessary health care, diagnostic services, treatment and other measures described in section 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan."* This requirement to cover all medically necessary section 1905(a) coverable services to individuals under the age of 21 ensures that these individuals receive any services determined to be appropriate for their specific illness or condition, regardless of any limitations a state may include in the Medicaid or CHIP State plan. Idaho's language in the second paragraph states that, *"IBI services cannot exceed twenty-two (22) hours per week."* Please describe how this statement complies with section 1905(r) of the Social Security Act.

The State has 90 days from the date of this letter to address the issues described above. Within that period the State may submit a SPA to address the inconsistencies and/or submit a corrective action plan describing in detail how the State will resolve the issues identified above in a timely manner. Failure to respond will result in the initiation of a formal compliance process. During the 90 days, CMS will provide technical assistance, as needed or required.

If you have questions or concerns, please contact me or have your staff contact Jan Mertel at (206) 615-2317 or via email at Jan.Mertel@CMS.hhs.gov.

Sincerely,

Carol J.C. Peverly
Acting Associate Regional Administrator
Division of Medicaid and Children's Health Operations

cc:
Leslie Clement, Administrator, Idaho Department of Health and Welfare
Paul Leary, Deputy Administrator, Idaho Department of Health and Welfare