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State/Territory Name: South Dakota

State Plan Amendment (SPA) #: 20-0009

This file contains the following documents in the order listed:

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106

Medicaid and CHIP Operations Group

December 2, 2020

William Snyder, Medicaid Director
Department of Social Services
Richard F. Kneip Building
700 Governors Drive
Pierre, SD 57501-2291

RE: TN 20-0009

Dear Mr. Snyder:

The Centers for Medicare and Medicaid Services (CMS) has completed its review of South Dakota's State Plan Amendment (SPA) Transmittal #20-0009, submitted on September 3, 2020. This SPA removes the face-to-face requirement for community mental health center (CMHC) services.

CMS approved SPA #20-0009 on December 1, 2020, with an effective date of July 21, 2020, as requested by the state. Enclosed is a copy of the CMS-179 summary form, as well as the approved pages for incorporation into the South Dakota State Plan.

During the course of review of the SPA, CMS also reviewed "collateral contacts" that are included under the rehabilitative services benefit. These items are described on the same pages of the amended changes. Based on our same page review, CMS has determined that more information about collateral contacts is needed in order to ensure compliance with Medicaid statute and regulations as outlined in a companion letter issued with this approval.

If you have any questions regarding this amendment, please contact Mandy Strom at mandy.strom@cms.hhs.gov or (303)844-7068.

Sincerely,

[redacted]
Digitally signed by James G. Scott -S
Date: 2020.12.02 15:52:01 -06'00'

James G. Scott, Director
Division of Program Operations

Enclosures

cc: Brenda Tidball-Zeltinger, Deputy Secretary, South Dakota Medicaid
Matthew Ballard, Deputy Director, South Dakota Medicaid
Mandy Strom, CMS North Branch-Division of Program Operations

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700 Governors Drive
Pierre, SD 57501-2291

RE: TN 20-0009 Companion letter

Dear Mr. Snyder:

This letter is being sent as a companion to our approval of South Dakota state plan amendment (SPA) transmittal #20-0009. The SPA removes the face-to-face requirements for certain Community Mental Health Centers (CMCH) services.

Our review of SPA 20-0009 included a review of "collateral contacts" that are included under the rehabilitative services benefit. These items are described on the same pages in which the state added modifications to the SPA. Regulations at 42 CFR 430.10 require that the state plan 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. Based on our review, CMS has determined that more information about collateral contacts (Supplement to Attachment 3.1-A, Item 13d, pages 27 and 28) is needed in order to ensure that the state is in compliance with Medicaid statute and regulations.

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

Collateral Contacts

The SPA describes "collateral contacts" as a component service of "outpatient services" and "specialized outpatient services for children" in CMHCs. However, collateral contacts are not considered Medicaid coverable services pursuant to section 1905(a) of the Social Security Act because they are not "care and services" furnished to Medicaid eligible individuals. The "collateral" can participate in a service but only if the service is Medicaid coverable as medical assistance and the service is for the direct benefit of the beneficiary. For example, the activity of

gathering information from a collateral is not covered medical assistance. However, development of a treatment plan for the beneficiary may involve gathering information from a collateral. In this latter instance, the service is for the direct benefit of the beneficiary, even though a collateral was involved. Other examples of services that include the participation of a "collateral" in a service for the benefit of the recipient are family therapy or family psycho-education. In such cases, the general expectation is that the beneficiary would be present for the service with the collateral; however, there may be some treatment sessions where the clinician's judgment is not to include the beneficiary. While the presence of a beneficiary is an important factor for coverage, the critical issue is that the service is a coverable 1905(a) service for the direct benefit of the beneficiary and not the collateral.

The SPA description of "collateral contacts" appears to set forth three purposes for these contacts – to seek information from collaterals for treatment planning; to educate or train collaterals in order that they can assist a beneficiary; and to refer collaterals to other needed services. Specifically, the SPA indicates:

> Collateral Contacts: Telephone or face-to-face contact with an individual other than the identified recipient to plan appropriate treatment, assist others so they can respond therapeutically regarding the recipient's difficulty or illness, or link the recipient, family, or both, to other necessary and therapeutic support.

The first purpose, seeking information from a collateral, could be accounted for in the rate paid for a covered Medicaid service for the beneficiary. To accomplish this, the state needs to include a service description in the state plan for a service such as "development of a treatment plan" and include in the service description language such as, "Collateral contacts are for the purpose of seeking information to assist in the development of the beneficiary's treatment plan." The reimbursement page in the state plan would need to account for this activity in the rate paid for the covered service.

The state's other two purposes for the collateral contacts actually propose that the collaterals receive a service or participate in a service, albeit for the direct benefit of the beneficiary. As noted above, participation by a collateral in a covered service can be accounted for in the rate paid for a covered service for the beneficiary.

When a state proposes that a collateral receive a service or participate in a service, it is important that the state clarify that the service is delivered to the beneficiary and the collateral together and that the collateral's participation in the service is for the direct benefit of the beneficiary. The SPA, as written, does not include such a clarification.

Accordingly, the SPA would need to be revised to identify the covered service or services for the beneficiary in which a collateral would participate, and include an assurance that the service is for the direct benefit of the beneficiary. Again, a service description would need to be included in the SPA. The service description would also need to include language such as, "The participation of the collaterals in the service is for the purpose of treating the beneficiary's condition and is for the direct benefit of the beneficiary."

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 or submit a Corrective Action Plan describing how the State will resolve the issued 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 any required technical assistance.

If you have any questions regarding this this letter, please contact Mandy Strom at mandy.strom@cms.hhs.gov or (303)844-7068.

Sincerely,

[redacted]
Digitally signed by James G. Scott -S
Date: 2020.12.02 15:52:38 06'00'

James G. Scott, Director
Division of Program Operations

cc: Brenda Tidball-Zeltinger, Deputy Secretary, South Dakota Medicaid
Matthew Ballard, Deputy Director, South Dakota Medicaid
Mandy Strom, North Branch-Division of Program Operations

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: SD-20-009

2. STATE: South Dakota

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
CENTERS FOR MEDICARE & MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
July 21, 2020

5. TYPE OF PLAN MATERIAL *(Check One):*

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ■ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate Transmittal for each amendment)*

6. FEDERAL STATUTE/REGULATION CITATION:
42 CFR 440.130

7. FEDERAL BUDGET IMPACT:
a. FFY 2020: $0.00
b. FFY 2021: $0.00

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:
Supplement 1 to Attachment 3.1-A, Page 27-30

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable):*
Supplement 1 to Attachment 3.1-A, Page 27-30

10. SUBJECT OF AMENDMENT:
The proposed State Plan Amendment (SPA) removes the face-to-face requirement for community mental health center providers.

11. GOVERNOR'S REVIEW *(Check One):*

■ GOVERNOR'S OFFICE REPORTED NO COMMENT ☐ OTHER, AS SPECIFIED:

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL:
[redacted]

13. TYPED NAME:
Laurie R. Gill

14. TITLE:
Cabinet Secretary

15. DATE SUBMITTED:
September 3, 2020

16. RETURN TO:
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF MEDICAL SERVICES
700 GOVERNORS DRIVE
PIERRE, SD 57501-2291

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:
September 3, 2020

18. DATE APPROVED:
December 1, 2020

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:
July 21, 2020

20. SIGNATURE OF REGIONAL OFFICIAL:
[redacted]
Digitally signed by James G. Scott -S
Date: 2020.12.02 15:53:11 -06'00'

21. TYPED NAME:
James G. Scott

22. TITLE:
Director, Division of Program Operations

23.REMARKS:

FORM CMS-179 (07-92)

SUPPLEMENT TO ATTACHMENT 3.1-A

13d. Rehabilitative Services

Rehabilitation services are medical and remedial services that have been recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level and furnished by one of the following practitioners:

1. Community Mental Health Centers (CMHCs) accredited by the state mental health authority. Services are covered for an individual for whom an integrated assessment has been prepared that includes a primary diagnosis of a mental illness. Services must be medically necessary and provided in accordance with a treatment plan.

   CMHC Covered Services

   a. Outpatient services are nonresidential diagnostic and treatment services that are distinct from specialized outpatient services for children, specialized outpatient services for adults, and assertive community treatment services.

      i. Integrated assessment, evaluation, and screening. Contact where the primary purpose is to develop information regarding a recipient's emotional state, and social history for use in formulating a treatment plan. Screening and evaluation includes psychosocial, psychological, and psychiatric examinations for diagnosis and treatment recommendations.
      ii. Individual therapy. Therapeutic contact between a recipient and therapist in which the therapist delivers direct therapy/counseling to assist the recipient in progress toward therapeutic goals.
      iii. Group therapy. Therapeutic contact between a therapist and two or more individuals in which the therapist delivers therapies/counseling to multiple individuals, and in which the therapist and the group seek to assist progress towards treatment goals. Group therapy services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.
      iv. Family therapy. Therapeutic contact between one or more family members and the therapist in which the therapist delivers direct therapy relating to the identified recipient's therapeutic goals. Family therapy services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.
      v. Psychiatric services. Psychiatric assessment, treatment, and prescription of pharmacotherapy with the primary purpose of prescribing or reviewing a recipient's use of pharmaceuticals.
      vi. Collateral contacts. Telephone or face-to-face contact with an individual other than the identified recipient to plan appropriate treatment, assist others so they can respond therapeutically regarding the recipient's difficulty or illness, or link the recipient, family, or both, to other necessary and therapeutic community support.

   b. Specialized Outpatient Services for Children are comprehensive services and support provided to a child or youth under age 21 with serious emotional disturbance (SED) and the child or youth's family, including a child or youth with a co-occurring disorder.

i. Integrated assessment, evaluation, and screening. Contact where the primary purpose is to develop information regarding a recipient's emotional state, and social history for use in formulating a treatment plan. Screening and evaluation includes psychosocial, psychological, and psychiatric examinations for diagnosis and treatment recommendations.

ii. Care coordination. Care coordination is a collaborative process which assesses, plans, implements, coordinates, monitors and evaluates the options and services to meet an individual's health needs as identified in the treatment plan.

iii. Individual therapy. Therapeutic contact between a recipient and therapist in which the therapist delivers direct therapy/counseling to assist the recipient in progress toward therapeutic goals.

iv. Group therapy. Therapeutic contact between a therapist and two or more individuals in which the therapist delivers therapies/counseling to multiple individuals, and in which the therapist and the group seek to assist progress towards treatment goals. Group therapy services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.

v. Parent or guardian group therapy. Goal directed therapeutic intervention with the parents/guardians of a recipient and one or more parents/guardians who are treated at the same time. Parent or guardian group therapy services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.

vi. Family education, support, and therapy. Therapeutic contact between one or more family members and the therapist in which the therapist delivers direct therapy, education relating to the identified child's condition, or support services to develop coping skills for the parents and family members, in regards to the identified child. Family education, support, and therapy services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.

vii. Crisis assessment and intervention services. An immediate therapeutic response available 24 hours a day 7 days a week that involves direct telephone or face-to-face contact with a recipient exhibiting acute psychiatric symptoms and/or inappropriate behavior that left untreated, presents an immediate threat to the recipient or others.

viii. Psychiatric services. Psychiatric assessment, treatment, and prescription of pharmacotherapy with the primary purpose of prescribing or reviewing a recipient's use of pharmaceuticals.

ix. Psychiatric nursing services. Includes components of physical assessment, medication assessment and monitoring, and medication administration for recipients unable to self-administer their medications.

x. Collateral contacts. Telephone or face-to-face contact with an individual other than the identified recipient to plan appropriate treatment, assist others so they can respond therapeutically regarding the recipient's difficulty or illness, or link the recipient, family, or both, to other necessary and therapeutic community support.

c. Specialized outpatient services for adults are medically necessary related treatment, and rehabilitative and support services to a recipient age 18 or older with serious mental illness (SMI), including those with co-occurring disorders. The individual must have at least one functional impairment as a result of the SMI.

i. Integrated assessment, evaluation, and screening. Contact where the primary purpose is to develop information regarding a recipient's emotional state, and social history for use in formulating a treatment plan. Screening and evaluation includes psychosocial, psychological, and psychiatric examinations for diagnosis and treatment recommendations.

ii. Crisis assessment and intervention services. An immediate therapeutic response available 24 hours a day 7 days a week that involves direct telephone or face-to-face contact with a recipient exhibiting acute psychiatric symptoms and/or inappropriate behavior that left untreated, presents an immediate threat to the recipient or others.

iii. Care coordination. Care coordination is a collaborative process which assesses, plans, implements, coordinates, monitors and evaluates the options and services to meet an individual's health needs as identified in the treatment plan.

iv. Psychiatric services. Psychiatric assessment, treatment, and prescription of pharmacotherapy with the primary purpose of prescribing or reviewing a recipient's use of pharmaceuticals.

v. Psychiatric nursing services. Includes components of physical assessment, medication assessment and monitoring, and medication administration for recipients unable to self-administer their medications.

vi. Symptom assessment and management. Assessment of an individual recipient's symptoms and providing education regarding managing their symptoms including medication and monitoring education.

vii. Individual therapy. Therapeutic contact between a recipient and therapist in which the therapist delivers direct therapy/counseling to assist the recipient in progress toward therapeutic goals.

viii. Group therapy. Therapeutic contact between a therapist and two or more individuals in which the therapist delivers therapies/counseling to multiple individuals, and in which the therapist and the group seek to assist progress towards treatment goals. Group therapy services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.

ix. Recovery support services. Supportive counseling/psychotherapy (when diagnostically indicated) and the development of psychosocial and recovery skills may be provided to help the recipient cope with and gain mastery over symptoms and disabilities, including those related to co-occurring disorders, in the context of daily living.

x. Psychosocial rehabilitation services. Provided on an individual or group basis to assist the recipient to gain or relearn self-care, interpersonal, and community living skills needed to live independently, sustain psychiatric stability, and progress towards recovery.

d. Assertive community treatment (ACT) services. Designed for an individual age 18 or older with a serious mental illness and functional impairments as a result of the serious mental illness. ACT provides medically necessary related treatment, rehabilitative, and support services to an eligible recipient who require more intensive services than can be provided by specialized outpatient services for adults.

i. Integrated assessment, evaluation, and screening. Contact where the primary purpose is to develop information regarding a recipient's emotional state, and social history for use in formulating a treatment plan. Screening and evaluation includes psychosocial, psychological, and psychiatric examinations for diagnosis and treatment recommendations.

ii. Crisis assessment and intervention services. An immediate therapeutic response available 24 hours a day 7 days a week that involves direct telephone or face-to-face contact with a recipient exhibiting acute psychiatric symptoms and/or inappropriate behavior that left untreated, presents an immediate threat to the recipient or others.

iii. Care coordination. Care coordination is a collaborative process which assesses, plans, implements, coordinates, monitors and evaluates the options and services to meet an individual's health needs as identified in the treatment plan.
iv. Psychiatric services. Psychiatric assessment, treatment, and prescription of pharmacotherapy with the primary purpose of prescribing or reviewing a recipient's use of pharmaceuticals.
v. Psychiatric nursing services. Includes components of physical assessment, medication assessment and monitoring, and medication administration for recipients unable to self-administer their medications.
vi. Symptom assessment and management. Assessment of an individual recipient's symptoms and providing education regarding managing their symptoms including medication and monitoring education.
vii. Individual therapy. Therapeutic contact between a recipient and therapist in which the therapist delivers direct therapy/counseling to assist the recipient in progress toward therapeutic goals.
viii. Group therapy. Therapeutic contact between a therapist and two or more individuals in which the therapist delivers therapies/counseling to multiple individuals, and in which the therapist and the group seek to assist progress towards treatment goals. Group therapy services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.
ix. Recovery support services. Supportive counseling/psychotherapy (when diagnostically indicated) and the development of psychosocial and recovery skills may be provided to help the recipient cope with and gain mastery over symptoms and disabilities, including those related to co-occurring disorders, in the context of daily living.
x. Psychosocial rehabilitative services. Provided on an individual or group basis to assist the recipient to gain or relearn self-care, interpersonal, and community living skills needed to live independently, sustain psychiatric stability, and progress towards recovery.

Non-covered CMHC Services

a. The following are non-covered CMHC services:

i. Vocational counseling and vocational training at a classroom or job site;
ii. Academic educational services;
iii. Services that are solely recreational in nature;
iv. Services for individuals other than an eligible recipient or a recipient's family if the recipient is receiving specialized outpatient services for children;
v. Services provided to recipients who are in detoxification centers.
vi. Services provided to recipients who are incarcerated in a correctional facility;
vii. Services provided to recipients who are in juvenile detention facilities;
viii. Services provided to recipients who are in psychiatric residential treatment facilities, inpatient psychiatric hospital, or institutions for mental disease; and
ix. Transportation services.