



April 22, 2022

Shaina Zurlin, Chief
Medi-Cal Behavioral Health Division
Department of Health Care Services

Submitted via email to: countysupport@dhcs.ca.gov

Re: Draft BHIN No. 22-XXX: DRUG MEDI-CAL (DMC), DRUG MEDI-CAL ORGANIZED DELIVERY SYSTEM (DMC-ODS) AND SPECIALTY MENTAL HEALTH SERVICES (SMHS) PEER SUPPORT SERVICES

Dear Ms. Zurlin:

The undersigned organizations appreciate the opportunity to provide feedback on the draft Behavioral Health Information Notice (BHIN) No. 22-XXX regarding peer support services for Medi-Cal beneficiaries receiving services as part of Drug Medi-Cal (DMC), Drug Medi-Cal Organized Delivery System (DMC-ODS), and/or Specialty Mental Health Services (SMHS). Our organizations have years of experience advocating for the rights of children and youth with behavioral health conditions in California. We write with concern that the Department of Health Care Services (DHCS) is implementing the new state and federal authority to provide peer support services without appropriately considering the State's requirements under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) mandate.

Peer support services in behavioral health contexts are essential, often medically necessary

services, that are instrumental in the treatment of mental health conditions and substance use disorders (MH/SUD). Children and youth are not excepted from this reality; in fact, peer support services, including family peer support, have been widely accepted as essential components in the course of treatment for children and youth with MH/SUD conditions. For this reason, we are concerned to see the draft BHIN's disregard of California's (and counties') responsibility to make available peer support services for all Medi-Cal beneficiaries under 21 when the services are medically necessary under the EPSDT benefit. For Medi-Cal eligible children and youth under age 21, this is not an option for counties as the draft BHIN indicates.

EPSDT requires California to make available all coverable services necessary to correct or ameliorate a child's MH/SUD condition even if the State does not to provide coverage for the service through its Medicaid state plan.¹ This means that all SMHS covered by Medi-Cal, including ones that are "optional" for adults, must be provided to all children under age 21, when necessary. California now specifically incorporates the EPSDT medical necessity standard into state law and DHCS has clearly and correctly described these legal obligations in its recent state guidance concerning SMHS medical necessity and coverage requirements.²

While we understand that SB 803 and approval from the Centers for Medicare and Medicaid Services (CMS) allow counties to opt-in to provide peer support services, this new language does not alter the State's and counties' responsibility to provide peer support services when those services are medically necessary to correct or ameliorate behavioral health conditions in beneficiaries under 21. In fact, counties were already reimbursing members of the peer workforce through Medi-Cal outside of the new peer support service and, in so doing, presumably complying with provision of peer support under EPSDT through these existing policies and claiming practices.

This draft BHIN fails to remind counties of these obligations as it emphasizes only the optional nature of the peer support services and indicates that the service will only be available in counties that decide to opt in to provide the benefit. Nowhere in the draft BHIN does DHCS make a distinction between adult beneficiaries and individuals under 21 or clarify that peer support services will be optional, except when mandated under the EPSDT for a child or youth under age 21, as required. We request that this clarification be added to the final BHIN.

Specifically, the notice should include the following language from DHCS' BHIN 21-073, which states: *For individuals under 21 years of age, a service is "medically necessary" or a "medical necessity" if the service meets the standards set forth in Section 1396d(r)(5) of Title*

¹ 42 U.S.C. § 1396d(a)(4)(B).

² Cal. Wel. & Inst. Code § 14059.5; 14184.402; DHCS BHIN 21-073 (Criteria for beneficiary access to Specialty Mental Health Services (SMHS), medical necessity and other coverage requirements), December 10, 2021, available at: <https://www.dhcs.ca.gov/Documents/BHIN-21-073-Criteria-for-Beneficiary-to-Specialty-MHS-Medical-Necessity-and-Other-Coverage-Req.pdf>

42 of the United States Code. This section requires provision of all Medicaid-coverable services necessary to correct or ameliorate a mental illness or condition discovered by a screening service, whether or not such services are covered under the State Plan. The draft should also make clear that existing peer support services otherwise covered as SMHS for children and youth under age 21 can continue to be provided and are not required to meet the specific “Peer Support Specialist Certification” standards.

The above clarifications will not only eliminate confusion among counties that may now incorrectly assume that the all peer support services are optional in all circumstances, but also ensure all county MH/SUD policies and practices comply with EPSDT requirements to cover peer support services for children and youth when medically necessary.

We urge DHCS to correct the draft BHIN by taking the following actions:

- **Clarify upfront in the BHIN and the optional peer support services only applies to Medi-Cal beneficiaries 21 or over.** Because in practice beneficiaries under 21 are always subject to the EPSDT medical necessity criteria and counties must provide peer support services for this population when medically necessary, clarifying the language of the current draft BHIN as to adults would not contradict SB 803 and subsequent SPA language. On the contrary, doing so would be a permissible action taken by the state to protect the EPSDT rights of children and youth in Medi-Cal.
- **Add a section in the draft BHIN explaining that the new optional peer support service does not override counties’ responsibilities under EPSDT.** Because of the confusion this draft BHIN and other communications have created, the BHIN should explicitly indicate that counties continue to be responsible for provision of peer support services for children and youth when the services are necessary to correct or ameliorate a MH/SUD condition and that those obligations are not altered or changed by SB 803 or this BHIN. See the language provided above in the letter.
- **Provide a reminder or FAQ for counties on their responsibility to provide peer support services under EPSDT, when necessary for any Medi-Cal eligible child or youth under age 21.** In addition to clarifying the current draft BHIN, DHCS should remind all county MHPs and Drug Medi-Cal programs (including DMC-ODS) of how the existing EPSDT mandate interacts with this new “optional” peer support services. This written reminder should explain the medical necessity criteria that applies to children and youth and make a clear distinction between services under EPSDT and the optional peer support services for adults. We are happy to assist in the development of the new reminder or FAQ on peer support services and EPSDT.

Conclusion

Without clear instructions from DHCS, the draft BHIN may lead to denials of peer support

services for Medi-Cal beneficiaries under 21 even when those services are necessary under EPSDT. We request DHCS to address the issues with the draft BHIN and in future communications from the department on SB 803.

We welcome the opportunity to meet with you about our concerns as well as to collaborate on this matter before this benefit rolls out. If you have any questions, please contact Kim Lewis at lewis@healthlaw.org or Chris Stoner-Mertz at chris@cacfs.org.

Sincerely,

National Health Law Program
California Alliance of Child and Family Services
California Children's Trust
Children Now
Western Center on Law and Poverty

cc: Michelle Baass, Director, Department of Health Care Services
Jacey Cooper, State Medicaid Director, Department of Health Care Services
Kelly Pfeifer, Deputy Director of Mental Health and Substance Use Disorders,
Department of Health Care Services