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Office of the County Executive

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COUNTY OF SANTA CLARA
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MEMORANDUM

TO: BHSD Contract Providers

FROM: Miguel Márquez, Chief Operating Officer
Toni Tullys, Behavioral Health Services Department
Sherri Terao, Deputy Director, Systems of Care

DS MM DS TT DS ST

RE: BHSD Contract Provider Reimbursement During COVID-19

DATE: April 20, 2020

We appreciate the discussion on April 17, 2020 which allowed for both the County and BHSD Contract Providers to explore and evaluate potential options for reimbursement during the COVID-19 crisis. This memo serves to articulate concerns expressed both by Contract Providers and by the County including March 2020 billing, CBO request for rate increase, and BHSD contract language.

- **March Billing**: Contract Providers have reported that only three providers have received approval for PPP loans, which are not retroactive. The PPP is currently depleted, and while there are Congressional discussions underway to provide additional funding, providers have researched other options, but are likely to require funding to close the gap. Seven (7) providers exceed the 500 employees limit and are exploring loans to cover their costs. The County is not able to assume any financial responsibility for these loans, which are loans between these seven providers and third-party financial institutions.

  County Response: For the month of March 2020, Contract Providers can request and will be reimbursed for services delivered. Where there is a determined shortfall between direct services billed and the total costs incurred by the Contract Provider, a provider can submit the Cost Reimbursement Form (attached) to Vince Robben for a bridge payment to cover the gap between direct services billed and total costs incurred. As described below, Contract Providers must use their best efforts to obtain federal, state and/or other alternative funding sources to cover the gap between direct services billed and total costs incurred. Any such alternative funding sources, if received, shall first be used to repay any bridge payment provided by the County. However, if, despite its best efforts, a Contract Provider is unable to obtain alternative funding, then, to the extent legally possible, the County would forgive the repayment of the bridge payment in recognition of the special circumstances that existed due to the COVID-19 pandemic. If and when a Contract Provider learns it will not receive PPP and/or another alternative source of funding, it must notify the County, at which time the Contract Provider and the County will work

collaboratively to maximize the services to be provided by the Contract Provider, through both traditional and alternative means of delivery, along with necessary staffing adjustments to align service demand and supply. For subsequent months (using the example below, which was offered by the Contract Providers), Column C is an acceptable approach if a Contract Provider does not have PPP. Column C shows a bridge payment of $90,000 that would be paid to the Contract Providers to offset unearned revenue due to a reduced number of units of service billed. However, Contract Providers must use all PPP revenue (or other alternative sources of funding) to offset such a bridge payment if such revenues are received. If PPP is not available to a Contract Provider, the bridge payment will be forgiven so long as best efforts were made to obtain PPP and/or other alternative funding sources. Thereafter, the Contract Provider and the County will work collaboratively to maximize the services to be provided by the Contract Provider through both traditional and alternative means of delivery, along with necessary staffing adjustments to align service demand and supply.
If a Contract Provider receives PPP funds and/or other alternative sources of funding, the County is agreeable to Column A which describes how PPP revenue will offset costs associated with unearned revenue due to a reduced number of units of service being billed. Again, however, if a Contract Provider does not receive PPP funds and/or other alternative sources of funding, Column C would apply, and the Contract Provider and the County would then immediately work collaboratively to maximize the services to be provided by the Contract Provider through both traditional and alternative means of delivery, along with necessary staffing adjustments to align service demand and supply.

*Example provided by Contract Providers. Example has been adjusted for the month of March 2020:

	A. With PPP and agreement with County	B. With PPP and NO agreement with County	C. March - w/o PPP	D. Normal Month
UOS provided	100,000	100,000	100,000	130,000
Average Interim Rate	$ 3.00	$ 3.00	$ 3.00	$ 3.00
Monthly Direct Service Revenue	$ 300,000.00	$ 300,000.00	$ 300,000.00	$ 390,000.00
Monthly Expense	$ 390,000.00	$ 390,000.00	$ 390,000.00	$ 390,000.00
Applicable PPP Revenue	$ 312,000.00	$ -	$ -	$ -
“Guesstimate” 80% of expenses PPP eligible				
Delta between expense and Direct Service Revenue		$ 90,000.00	$ 90,000.00	$ -
Direct Service Revenue	$ 300,000.00	$ 300,000.00	$ 300,000.00	$ 390,000.00

Monthly Expense	$ 390,000.00	$ 390,000.00	$ 390,000.00	$ 390,000.00
PPP Revenue applied	$ 312,000.00	$ -	NA	NA
Paid by County on Direct Services	**$ 78,000.00**	**$ 300,000.00**	$ 300,000.00	$ 390,000.00
Bridge Payment			$ 90,000.00	
Agency's applicable PPP		$ 312,000.00		
Total County Payment	$ 78,000.00	$ 300,000.00	$ 390,000.00	$ 390,000.00
Total payment to CBO	$ 78,000.00	$ 612,000.00	$ 390,000.00	$ 390,000.00

- **Rate Increase:** Contract Providers are requesting a rate increase with the belief that doing so would draw down additional Medi-Cal revenue to cover unexpected costs due to COVID-19. Contract Providers estimate a range of requiring an annual adjustment of below 20% for FY2020. The request includes averaging the challenging COVID-19 months with the other months in Fiscal Year 19/20 annual cost report and estimating the annual adjustment.

County Response: The County must consider all ramifications of adjusting Contract Provider rates. The County is responsible for determining whether it is willing to adjust rates up when providing lower units of service. The rates paid by the County must reasonably approximate the cost, as Medi-Cal will ultimately pay only ***the lower of*** actual cost, the estimated allowable cost (the interim rate), or the published rate. The significant risk to the County of increasing interim rates is that no additional Medi-Cal funds would be drawn down, which defeats the purpose set forth for increasing the interim rates in the first place, and would result in less services to clients who need them. It is important to note that the County recently increased interim rates to account for the 12% increase that was recently agreed to. In doing so, the County took the highest actual costs from the prior year and added the 12% increase to those actual costs. Since Medi-Cal will ultimately pay only ***the lower of*** actual cost, the estimated allowable cost (the interim rate), or the published rate, another increase to the interim rate would not result in additional Medi-Cal draw down, creating a significant burden of unknown financial risk to the County in later years when final cost settlement is completed. Given that the Federal Government has not changed the rules and has not issued flexibility via an emergency waiver, the County cannot approve an interim rate increase at this time.

The authority that the County operates under for Certified Public Expenditure (CPE) reimbursement is a part of the 1915(b) and 1115 waivers. It is divided into county operated “costs” and contractor “organizational provider” expenditures which become a part of the County’s total costs. The State makes interim payments of federal financial participation (FFP) to the County Mental Health Plan (MHP) based upon expenditures submitted by the MHP. For services provided by a privately-operated Contract Provider, the MHP pays the Contract Provider before submitting a claim to the State for the payment of FFP. When submitting a claim for FFP for services provided by a County-operated or Contract Provider, the MHP is required to certify that it has made Medi-Cal allowable expenditures on which the claim for FFP is based, that the expenditures are no greater than the actual cost of providing services, and that the expenditures meet all federal and State requirements for claiming FFP.

In the end, the payments to Contract Providers must be settled ***to the lower of*** cost or negotiated rate (the negotiated rate is defined as the usual and customary charge negotiated at contract time) and the rates set with Contract Providers cannot exceed their Medi-Cal certified costs as determined by the Contract Providers' certified cost report.

➢ Contract Language: How will providers be paid either actual costs or MFO?

M. **Settlement of CONTRACTOR's Compensation.**

*1. **Interim Final Settlement.** After COUNTY completes interim cost reconciliation with DHCS, COUNTY will determine CONTRACTOR's interim final settlement amount.*

2. For direct services to clients, CONTRACTOR is entitled to receive the lowest of:
a) The rate per unit of service based on actual costs, as determined in the final cost report, multiplied by the actual units of service provided; or
*b) COUNTY's Maximum Financial Obligation set forth in the **Exhibit B(s)**.*

*3. If the interim final settlement amount exceeds the aggregate amount of interim reimbursements paid by COUNTY, pursuant to the above Section X, subsection M., 1., of this AGREEMENT ("**Interim Final Settlement**"), COUNTY will remit the difference to CONTRACTOR. If, however, the interim final settlement amount is less than the aggregate amount of interim payments made pursuant to Section X, subsection M., 1., of this AGREEMENT ("**Interim Final Settlement**"), COUNTY will give notice to CONTRACTOR of the amount to be returned to COUNTY, and CONTRACTOR will remit the difference to COUNTY. COUNTY, at its election, may demand the payment of such amounts within thirty (30) days of the date of the notice, or may use the amounts due as a credit against other amounts owed by COUNTY to CONTRACTOR for future services to be...*

County Response: It has been the County's experience that the request to return funds for overpayments has been challenging for some Contract Providers. These overpayments vary depending on the Contract Provider's current financial outlays and expenditures in any particular fiscal year, when the request by the County is made to return overpayments. Therefore, the County will continue to pay actual costs.

cc: Todd Landreneau, BHSD Deputy Director, Managed Care Systems
Tess Tiong, Finance Director, General Fund Departments, Health System
Vince Robben, Finance Manager, BHSD Provider Contracts, Health System