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July 26, 2013

TO: Each Supervisor

FROM: Jonathan E. Fielding, M.D., M.P.H.
Director and Health Officer

SUBJECT: **UPDATE ON THE DRUG MEDI-CAL PROGRAM IN LOS ANGELES COUNTY**

This is to inform you that commencing Monday, July 29, 2013, CNN will be airing a Center for Investigative Reporting (CIR) series entitled "Rehab Racket" on the Anderson 360 show. The series will also be posted on the CIR website on Monday. The series will investigate California Drug Medi-Cal (DMC) Program funded providers. We previously notified you on July 17, 2013 about this forthcoming investigative report.

The California Department of Health Care Services (DHCS) has recently taken actions to suspend the DMC State certification of agencies suspected of Medi-Cal fraud. DHCS is solely responsible for reviewing and certifying eligible providers to participate in the DMC program. Los Angeles County (LAC) Department of Public Health (DPH) Substance Abuse Prevention and Control (DPH-SAPC), the State contractor for this program in LAC, has been concerned about the lack of DMC program provision for local oversight to mitigate against Medi-Cal fraud and poor subcontractor performance. The State's recent actions highlight the need for DMC program revisions and improvements.

On July 18 and 24, 2013, DPH received preliminary notice from DHCS of the suspension of the DMC certification of 16 agencies which provide DMC services in LAC. According to DHCS, the 16 agencies have been referred to the State Department of Justice for investigation of Medi-Cal fraud. Due to the pending investigation, and DPH-SAPC confidentiality agreements with the State, we are restricted from sharing the identity of these agencies.

As a result of the suspensions, DPH has stopped processing these agencies' claims effective the date of notice from DHCS. DPH-SAPC staff continues to assist any client who requires transfer as a result of the agencies' service suspension.

The attached report details DPH's longstanding concerns about the structure and operation of this state program. The report also details actions undertaken by DPH to minimize the financial risk to the County related to the lack of local oversight over the certification process for providers. Though the DMC program is funded entirely through matching federal Medicaid and State funds, the report outlines the financial risk to the County from poor subcontractor performance. Additionally, the report provides recommendations to address the challenges DPH faces as the State contractor for the DMC program in LAC and DPH's efforts to resolve these issues with the State.

We will provide you with additional updates on the Department of Justice's investigation and the continuing efforts by the County and State to protect the fiscal and programmatic integrity of the DMC program.

If you have any questions or would like additional information, please let me know.

JEF:dhd

Attachment

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

COUNTY OF LOS ANGELES
Public Health

ATTACHMENT

SUBSTANCE ABUSE PREVENTION AND CONTROL
Drug Medi-Cal Program: Background and Recommendations

This report summarizes the history of California's Drug Medi-Cal (DMC) Program in Los Angeles County (LAC), the role of the LAC Department of Public Health (DPH) Substance Abuse Prevention and Control (DPH-SAPC) as the State contractor for the DMC program, and recommendations for DMC program revisions and improvements.

Background

The DMC program is California's program for covered substance abuse treatment services to Medi-Cal beneficiaries. The DMC program is a statewide entitlement program and it is one of the major sources of funding for substance abuse treatment not only in Los Angeles, but throughout California. DMC provides a carved-out benefit of five different statutorily defined modes of treatment services for persons with an alcohol and/or drug abuse problem. Prior to Medi-Cal expansion set to occur in 2014 through the Affordable Care Act, DMC beneficiaries have been limited by federal and State eligibility rules to welfare recipients and other qualified low-income persons-primarily families with children and the aged, blind, or disabled.

According to data collected by DPH-SAPC, participant admissions and treatment services have steadily increased in LAC over the last several years. Thirty-six percent of participants were under the age of 18, and 10 percent were 18 to 25 years of age. Without DMC funding, there would be limited access to substance use disorder (SUD) treatment services for those under 18 and transitional age youth (18 to 25).

The DMC program is funded with 50 percent Medicaid federal financial participation funds and 50 percent matching State funds. No net County costs are used for the DMC program.

State and County Roles

State Responsibilities

The DMC program was previously administered by the California Department of Alcohol and Drug Programs (DADP), with responsibilities transferred to the State Department of Health Care Services (DHCS), the state agency ultimately responsible for all Medicaid funds. DMC services are for the most part delivered through county substance abuse treatment systems. Services are provided in outpatient or residential facilities in the community by subcontract with community-based providers that deliver treatment services directly to clients. The modes of treatment covered under DMC are: (1) narcotic treatment, (2) outpatient Naltrexone treatment, (3) outpatient drug free, (4) day care habilitative, and (5) perinatal residential services.

The State has financial authority and control of the DMC program. To become an eligible provider in the DMC program, a community-based provider must become State-certified. The State is responsible

for reviewing and certifying eligible providers to participate in the DMC program. State certification is based upon a completed application, an on-site inspection to ascertain whether the provider is in compliance with certification standards (e.g., fire safety, use permits, accessibility of service, and the physical plant), and a review of the programs' policies and procedures.

County Responsibilities

Through an agreement with the State, approved by the Board of Supervisors in 1994, DPH-SAPC became the State's contractor and fiscal intermediary of the DMC program in LAC. DPH-SAPC receives funds to cover actual direct costs in its role as fiscal intermediary for the State, subcontracts for services, and monitors DMC subcontractors. The Board has delegated authority for approving new contracts and for terminating contracts to County Counsel, and DPH-SAPC notifies the Board when this delegated authority is used.

Benefits of the program include providing funding for the largest network of medication assisted therapy through narcotic treatment programs (methadone and Naltrexone); increasing options for youth who need substance use disorder treatment; providing funding for expanded SUD services; increasing the number of available SUD treatment for consumers; and making services available to pregnant and parenting women.

As the State contractor, the County is required to provide alcohol and other drug treatment services deemed medically necessary for Medi-Cal eligible populations according to federal and state regulations. The County is responsible for contracting with providers; monitoring program services to ensure compliance with all rules, regulations, and contractual requirements; implementing and maintaining a system of fiscal disbursements and controls; processing claims for reimbursement; providing technical assistance as necessary; and working with agencies to correct deficiencies., Regulations governing providers in the DMC program are contained primarily in California Code of Regulations, Title 22.

DPH-SAPC is responsible for assuring subcontractors' compliance with federal and State laws, rules and regulations, terms of the contracts, and for resolving problems with contractors. DMC agencies are monitored for compliance with their contractual obligations at least once each fiscal year by DPH-SAPC.

Challenges

There are a number of challenges that the County faces as the State contractor for DMC services. The County has no control over who gets certified to deliver services as this is the sole responsibility of the State. In addition, rapid growth of the program, lack of oversight from the State, and a lengthy and arduous process to decertify fraudulent providers are potential areas for problems. Some of the more common problems DPH-SAPC has found through contract monitoring include questionable documentation, inadequate record keeping, and providing services to persons without properly documenting medical necessity.

The County and DPH assume a financial risk when contracting with DMC providers because the County processes payments for billed claims within 60 days, before the claims are adjudicated by the State. If the State rejects the billed claims, it is difficult and at times impossible for DPH-SAPC to recover the monies already paid to the subcontractor (e.g., after a subcontractor has closed its doors without notice.) This payment arrangement exists because of the County's obligations to pay subcontractors in a timely manner and to help ensure continuity of services to clients.

Phases of DMC Contracting History

There are three distinct contracting phases in the history of the DMC program. The first phase is during the first decade of the program marked by a doubling in the number of agencies funded for DMC services. During the second phase, the State and counties attempted to stem DMC program budget growth. DPH-SAPC observed an increase in audit deficiencies among subcontractors and began adding programmatic standards and requirements prior to an automatic acceptance and funding of State-certified DMC services. In the third phase, a shift of oversight occurred between the State and counties for DMC contracts.

Phase I: 1994-95 through 2007-08:

During this period, the County became a contractor with the State of California for DMC services. A dramatic increase occurred in the number of DMC subcontractors in LAC from 2004 and 2008. With no County control over who gets certified to deliver services, DPH-SAPC observed a significant level of programmatic audit deficiencies among subcontractors. DPH instituted policies to conduct initial site visits for subcontractors and placed caps on initial subcontractor DMC funding with augmentations given only after a follow-up site visit.

Fiscal Year	Number of Agencies	Funding
1994-1999	Data unavailable	Data unavailable
1999-2000	47	$19 Million
2000-01	39	$15.6M
2001-02	47	$20.8M
2002-03	54	$26.7M
2003-04	66	$32.0M
2004-05	83	$41.4M
2005-06	97	$50.7M
2006-07	127	$62.0M
2007-08	132	$64.8M

Phase II: 2007-08 through 2009-10

DPH-SAPC implemented new contract standards and requirements for subcontractors, and instituted conditions by which DMC contracts may be terminated immediately due to problematic audit findings. Fourteen DMC contracts were terminated in 2008, and 16 in 2009. Thirty-six applications for new DMC contracts were declined and referred to the State for contracting in 2009, and ten in 2010. Agencies who did not meet the new County contract standards could still contract directly with the State and provide services in LAC. (DPH-SAPC was not responsible for auditing agencies with direct state contracts.)

Fiscal Year	Number of Agencies	Funding
2007-08	132	$64.8M
2008-09	115	$66.6M
2009-10	99	$99.6M

Phase III: 2010-11 to Present:

During this period, the State fully transferred responsibility to contract with agencies to counties. DPH established additional contracting requirements, began conducting mandatory trainings, and began providing one-on-one technical assistance to providers.

Fiscal Year	Number of Agencies	Funding
2010-11	112	$83.4M
2011-12	138	$93.8M
2012-13	143	$99.5M

In October 2010, DPH-SAPC instituted an additional set of requirements that agencies must meet to contract with the County. In March 2011, DPH-SAPC informed all Board offices about the minimum requirements for contracting with the County for DMC services and the additional performance security requirements for agencies who do not meet the minimum required number of years of experience in providing SUD treatment services.

Actions and Next Steps

It is critical that the County continue to seek opportunities for addressing the challenges it faces with the DMC program. Some of the actions that may be considered are as follows:

- Actively pursue an official role for the County in the certification process. The State currently certifies DMC programs based on a completed application and an on-site inspection to ascertain whether the provider is in compliance with certification standards in the following areas: fire safety, use permits, accessibility of service, and physical plant. The DHCS also checks if the programs have policies and procedures in place in the areas of utilization review, patient health records, administration, health records, drugs, and basic services.

- Request that the State hold the County immune to liability if the County identifies problems and advises DHCS or the Department of Justice (DOJ) about these problems. Such reporting presently results in the State conducting its own investigation, referring the subcontractor to DOJ for prosecution, and decertifying a DMC agency. When any of this occurs, the disallowances resulting from the State investigation are paid back by the County.

- Request that DHCS adopt formal policy and procedures for advising the County immediately when agencies are referred to DOJ for investigation. Upon learning of such referral, DPH-SAPC can take steps to minimize its financial losses should the DHCS decertify the agency.

- Review the feasibility of limiting the Minor Consent Program, which is a State-funded program for minors. DPH-SAPC has found that many of the questionable practices occur in this program.

- Request that the State expand its certification review to include in-depth administrative, programmatic, and financial components. In addition to inspecting the proposed service sites, new applicants for DMC certification should also be certified based upon an ability to meet treatment standards and their use of evidence-based treatment or best practices within the SUD field.

- Request that that State make its certification "provisional" until an agency passes an initial and a second-year State annual audit. A two-year provisional period would allow both DHCS and DPH-SAPC to follow up on non-compliance issues and ensure that all deficiencies identified are corrected.

- Pursue revisions to California Code of Regulations Title 22, Section 51341.1(h)(1) [Admission criteria and procedures], to only allow the use of waivers if the beneficiary's most recent documented physical examination was completed within one year of the assessment. A face-to-face assessment at admission by a physician, registered nurse practitioner, or physician assistant will assist in effective treatment planning, especially for those with co-occurring mental health and SUD or physical illnesses as a result of substance abuse.

- Clearly define "medical necessity" in admitting or qualifying individuals eligible for DMC services. Title 22, Section 51341.1(h)(1)(D) requires the provider to establish medical necessity for each beneficiary. The physician employed by the provider confirms medical necessity at admission and reviews and signs each beneficiary's treatment plan. The identification of medical necessity is questionable when the physical examination is waived.

- Limit the number of participants in a group session for Day Care Habilitative (DCH) services. For outpatient drug free group counseling sessions, the size is set at no less than four and no more than 10. The same group size should be adopted for DCH.

- Require that an assessment using a reliable and validated assessment tool be completed within 14 days of intake. Add a requirement that an assessment must be completed before a treatment plan is developed and that no group counseling session may be provided until a treatment plan is completed and signed by the primary counselor, and reviewed and signed off by the medical director.

To date, DPH-SAPC has pursued the following to address the challenges it faces with the DMC program.

1. **Local oversight of DMC certification process**: DPH has sent a request to DHCS to delegate authority for certification of DMC programs in LAC to DPH-SAPC.

2. **Provider engagement**: DPH-SAPC engages with newly contracted DMC agencies to assist them in learning about and adopting evidence-based practices. Beginning in 2009, DPH-SAPC has hosted regular provider meetings and training on evidence-based practices. DPH-SAPC also provides subcontractors with guidance and technical assistance for the provision of high-quality services.

3. **DHCS Notice of DOJ Investigation**: DPH-SAPC is pursuing an agreement with the State, currently under review by County Counsel, to set up a process for DHCS to immediately advise the County when agencies are referred to DOJ for investigation. This will assist DPH-SAPC in taking steps to minimize financial losses when DHCS decertifies agencies.

Conclusion

Recent actions by the State to suspend DMC State certifications of agencies suspected of Medi-Cal fraud has brought attention to the need for addressing the challenges that the County faces in acting as the State contractor for the DMC program. This report details the history of the DMC program in LAC, the respective roles of the State and the County, and actions DPH-SAPC has taken to address challenges associated with the DMC program.

Providing LAC residents, including Medi-Cal beneficiaries, with high-quality substance abuse treatment services remains a priority for DPH. DPH will continue to work with our State partners on the challenges outlined in this report to protect the integrity of the DMC program in LAC.