



STATE OF WASHINGTON

October 31, 2013

Barbara Coulter Edwards, Director
Disabled and Elderly Health Programs Group
Department of Health and Human Services
Centers for Medicare and Medicaid Services
7500 Security Boulevard, MS/S2-14-26
Baltimore, MD 21244-1850

Dear Ms. Edwards:

Thank you for your letter dated September 18, 2013, which responded to our letter, dated July 29, 2013, and clarified the concerns of the Centers for Medicare and Medicaid Services (CMS) regarding our state's Regional Support Network (RSN) system. It also provided an extension for submission of a Corrective Action Plan (CAP) until December 2, 2013.

We would like to raise several further points of inquiry.

1. The initial CMS letter of July 5, 2013 suggests that the state's existing RSN contracts could not have been "validly procured" unless the procurement was open and competitive. Your September 18, 2013 letter, however, indicates agreement that 45 C.F.R. §92.36(a) allows states to procure services using federal grant funds in the same manner as non-federal grant funds, so long as the state follows the cost allocation principles of OMB Circular A-87. Please clarify if CMS now agrees that Washington's RSN contracts have been validly procured. If CMS disagrees, then please provide us with citations to federal statutes or regulations that support your position.
2. CMS appears to believe that "intergovernmental agreements" (awards or grants) lead to the application of OMB Circular A-87, while "contracts" do not. Your letter of September 18, 2013 states, "We conclude that state law confirms that the arrangement between the state and the RSNs is an intergovernmental agreement..." As a matter of Washington State law, the RSN agreements are "contracts" under the Interlocal Cooperation Act, ch. 39.34 RCW, and the Community Mental Health Services Act, ch. 71.24 RCW. Our courts have interpreted the RSN agreements as contracts. "The State also provides mental health services through *contracts* between the Department [of Social and Health Services] and county regional support networks." *Pierce County v. State of Washington*, 144 Wn. App. 783, 797, 185 P.3d 594 (2008) (emphasis added). Please clarify whether CMS agrees that state law is determinative when interpreting the common law of contracts. In addition, it seems possible to conclude that the state's arrangements with RSNs are both "awards" and "contracts." We note that OMB A-87 sets forth a standard definition of "contract" and considers awards to be contracts.

Barbara Coulter Edwards

October 31, 2013

Page 2

3. OMB Circular A-87 does not appear to explicitly forbid profit or increments above costs in the context of capitated risk contracts. Instead, it clearly states, "Provision for profit or other increment above cost is outside the scope of this Circular". Please clarify how OMB Circular A-87 applies to capitated risk contracts, separate from the method of procurement. For example, what is the relationship between OMB A-87 (on the one hand) and Section 1932 of the Social Security Act and 42 C.F.R. Part 438 (on the other hand), under which Washington's behavioral health program has operated since 2002?

The state has been provided a December 2, 2013 deadline for the submission of a CAP to CMS, under the premise that the State agrees with CMS's analysis. We intend to maintain a collaborative approach to this issue, and in that context, your timely assistance in resolving these questions would be most appreciated. Like you, we are most interested in improving care delivery and health outcomes for the clients we serve.

Thank you for your time and consideration of these follow-up questions.

Sincerely,



MaryAnne Lindeblad, BSN, MPH
Medicaid Director
Health Care Authority



Jane Beyer
Assistant Secretary
Department of Social and Health Services