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ENDORSED
FILED
San Francisco County Superior Court

OCT 27 1999

ALAN CARLSON, Clerk
BY: STEVEN DOUGLAS Deputy Clerk

IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

WORTH HALE, II) Case No. 987260

Plaintiff,)
) JUDGMENT
) AFTER TRIAL
) BY COURT

v.)

KIMBERLY BELSHÉ, Director, Department)
of Health Services, sued in her official)
capacity; CALIFORNIA DEPARTMENT OF)
HEALTH SERVICES; STEPHEN)
MAYBERG, Director, California Department)
of Mental Health, sued in his official capacity;)
CALIFORNIA DEPARTMENT OF)
MENTAL HEALTH; MITCHELL KATZ,)
M.D., Director, San Francisco City and)
County Department of Public Health, sued in)
his official capacity; JO RUFFIN, L.C.S.W.,)
Mental Health Director, San Francisco City)
and County Division of Mental Health, sued)
in her official capacity;)
SAN FRANCISCO DEPARTMENT OF)
PUBLIC HEALTH; and DOE 1 through DOE)
20, inclusive,)

Defendants.)

The above action came on regularly for trial on February 23, 1999, at 9:00 a.m., in Department 306 of the above-entitled Court. Following the granting of a timely motion on behalf of plaintiff to reopen for good cause, the matter again came on regularly for trial on September 10, 1999, at 9:00 a.m., in Department 306 of the above-entitled Court. Plaintiff

1 appeared through his attorneys, Daniel Brzovic and Michael Stortz of Protection and
2 Advocacy, Inc. Defendants Diana M. Bonta, R.N., Dr.P.H., successor in interest to named
3 defendant Kimberly Belshé, the California Department of Health Services, Stephen Mayberg,
4 the California Department of Mental Health, (referred to as "State Defendants"), appeared
5 through their attorneys, Bill Lockyer, Attorney General, by Beverley R. Meyers, Deputy
6 Attorney General. Defendants, Mitchell Katz, M.D., Joe Ruffin, L.C.S.W., and San
7 Francisco Department of Public Health, (Referred to as City and County of San Francisco
8 Defendants"), appeared through their attorneys Louise H. Renne, City Attorney, by Margarita
9 Gutierrez, Deputy City Attorney.

10 The matter was tried by the Court for the reason that plaintiff, in his complaint,
11 requested equitable and declaratory relief only. The Court heard and considered the testimony,
12 and the argument of counsel, the matter was submitted for a decision, and a statement of
13 decision was waived.

14 The central issues in this action have been resolved in that plaintiff has been transferred
15 from the San Francisco General Hospital Mental Health Rehabilitation Facility to a community
16 board and care residence. Therefore all claims for injunctive or other coercive relief are now
17 moot, and plaintiff is no longer seeking such relief. Claims for declaratory relief under the
18 first, third, fourth, fifth, ^{SIXTH} seventh, and eighth causes of action are now moot, plaintiff is no
19 longer seeking relief under those causes of action, and the court therefore declines to issue a
20 declaration under those causes of action.

21 Although plaintiff now resides in the community rather than in an institution, there is
22 no evidence that he is presently receiving the individual one-on-one Mental Health
23 Rehabilitation services which he has been seeking in this action. Claims for declaratory relief
24 for such services are fairly embraced within the second and ninth causes of action of plaintiff's
25 third amended and supplemental complaint. (Sufficiency of amount, duration and scope of
26 benefits under the Medi-Cal program, and violation of 42 U.S.C. section 1983, respectively.)
27 Defendants filed answers to plaintiff's Complaint denying that defendants have a duty to
28 provide such services. Nevertheless, at trial, the defendants took the position that individual

1 one-on-one Mental Health Rehabilitation services can be covered services under current Medi-
2 Cal regulations. There is no evidence that any of plaintiff's treating psychiatrists or treating
3 professionals actually recommended individual one-on-one Mental Health Rehabilitation
4 services for plaintiff, as medically necessary.

5 The Court finds that a declaration of plaintiff's rights and defendants' duties with
6 respect to the provision of Mental Health Rehabilitation services under the Medi-Cal program
7 is therefore necessary and appropriate. Now therefore

8 **IT IS ORDERED, ADJUDGED AND DECREED** that plaintiff is entitled to the
9 following declaration:

10 Mental Health Services are a covered service under the California Medi-Cal program.
11 Medi-Cal regulations currently define Mental Health Services as follows:

12 'Mental Health Services' means those individual or group therapies and interventions
13 that are designed to provide reduction of mental disability and improvement or
14 maintenance of functioning consistent with the goals of learning, development,
15 independent living and enhanced self-sufficiency and that are not provided as a
16 component of adult residential services, crisis residential treatment services, crisis
17 intervention, crisis stabilization, day rehabilitation or day treatment intensive. Service
18 activities may include, but are not limited to, assessment, planned development,
19 therapy, rehabilitation and collateral.

20 California Code of Regulations, Title 9, Section 1810.227.

21 Mental Health Services under Medi-Cal include individual one-on-one Rehabilitation.

22 Medi-Cal regulations currently define Rehabilitation as follows:

23 'Rehabilitation' means a service activity which includes assistance in improving,
24 maintaining, or restoring a beneficiary's or group of beneficiaries' functional skills,
25 daily living skills, social and leisure skills, grooming and personal hygiene skills, meal
26 preparation skills, and support resources; and/or medication education.

27 California Code of Regulations, Title 9, Section 1810.243.

28 Medi-Cal Mental Health Rehabilitation services, as defined above, must be sufficient in
amount, duration and scope to reasonably achieve their purpose. Title 42, Code of Federal
Regulations, Section 440.230(b). Consistent with this requirement, Medi-Cal Mental Health
Rehabilitation services are limited to services which are medically necessary as defined under
California Medi-Cal law and regulations. California Code of Regulations, Title 9, Section
1830.205. There is no cap or limit on the number of hours per day or the number of days per

1 week that Medi-Cal Mental Health Rehabilitation services are available. There is no annual or
2 lifetime cap or limit on the availability of Medi-Cal Mental Health Rehabilitation services.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff's
4 entitlement to costs is reserved.

5 DATED:

6 By: ~~THOMAS J. MELLON, JR.~~
7 THOMAS J. MELLON
8 Judge of The Superior Court
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CALIFORNIA DEPARTMENT OF

Mental Health

1600 9th Street, Sacramento, CA 95814
(916) 654-2309

May 4, 2001

DMH LETTER NO.: 01-01

TO: LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: ONE-TO-ONE MENTAL HEALTH SERVICES

The Department of Mental Health (DMH) is providing the following clarification regarding mental health services provided by Mental Health Plans (MHPs) as a part of the Medi-Cal Specialty Mental Health Services Consolidation program.

Title 9, California Code of Regulations (CCR), Section 1810.277 defines mental health services as follows:

- "Mental Health Services" mean those individual or group therapies and interventions that are designed to provide reduction of mental disability and improvement or maintenance of functioning consistent with the goals of learning, development, independent living and enhanced self-sufficiency and that are not provided as a component of adult residential services, crisis residential treatment services, crisis intervention, crisis stabilization, day rehabilitation, or day treatment intensive. Service activities may include but are not limited to assessment, plan development, therapy, rehabilitation and collateral.

This definition includes rehabilitation as a possible service activity. Title 9, CCR, Section 1810.243 defines rehabilitation as follows:

- "Rehabilitation" means a service activity which includes assistance in improving, maintaining, or restoring a beneficiary's or group of beneficiaries' functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources; and/or medication education.

Attachment 2

Rehabilitation as a component of mental health services may include individual one-to-one services in home, community and other settings, provided all other requirements of the Medi-Cal Specialty Mental Health Services Consolidation program are met. There is no cap or limit on the number of hours per day or the number of days per week that this service activity may be provided, nor is there an annual or lifetime cap or limit. Specific requirements that should be considered in determining whether or not rehabilitation should be provided to a beneficiary include medical necessity criteria at Title 9, CCR, Sections 1830.205 and 1830.210; services excluded from coverage by MHPs at Title 9, CCR, Section 1810.355; and requirements for claiming Federal Financial Participation (FFP) at Title 9, CCR, Sections 1840.312, 1840.314, and 1840.316. Copies of these regulations are enclosed.

The regulations governing medical necessity criteria provide a listing of the mental disorders covered by the MHPs, criteria addressing the severity of the impairments the disorder causes, and criteria for the level of success that is expected from any proposed intervention. These medical necessity criteria require that there must be a direct link from the beneficiary's diagnosis to the identified impairment to the intervention being considered:

- The beneficiary must be diagnosed with a covered mental disorder.
- The beneficiary must have an impairment that is directly related to the covered mental disorder.
- The focus of the intervention must be the identified impairment.

The intervention must also be a specialty mental health service. Excluded services covered by the Medi-Cal program are identified in Title 9, CCR, Section 1810.355. (Beneficiaries in need of excluded services should be referred to appropriate physical health care providers.) Although the distinction between specialty mental health services and excluded services is obvious in most cases, the distinctions between rehabilitation as a component of mental health services and excluded services such as personal care services are sometimes difficult to make. Rehabilitation and personal care services both assist clients to live independently. Rehabilitation, however, does this by activities that are designed to enable the client to overcome the limitations due to the mental disorder and teach the client to perform these activities for themselves. Personal care services do this by performing activities for the clients that the clients are unable to do for themselves. For example:

- Rehabilitation might include explaining and ensuring the client understood the importance of taking prescribed medications and working with a client to develop a system that would help the client to take medications on time.

Personal care services might include reminding the client to take self-administered prescribed and/or over the counter medications each time the medications are to be taken.

- Rehabilitation might include teaching a client to shop, prepare, and eat meals and reviewing the effectiveness of the instruction at periodic intervals. Personal care services might include food shopping, meal preparation and feeding the client.
- Rehabilitation might include planning social activities with the client consistent with the client's socialization goals and encouraging/monitoring the client's participation in these activities. There is no comparable personal care services, since no one can perform social activities for another.

All minutes submitted as a claim for Medi-Cal FFP for one-to-one rehabilitation provided as a mental health service must involve active treatment of the beneficiary. MHPs are not required to cover non-treatment time. MHPs may not claim FFP for non-treatment time if they chose to remain with the beneficiary during non-treatment time. (Nothing in this letter is intended to change existing standards for claiming FFP for documentation or travel time.) Beneficiaries receiving mental health services who have intermittent need for rehabilitation may be accommodated with scheduled home, community or office visits that meet these needs or may be assigned to a person who is on call to deliver these services. Please note that this restriction does not apply to therapeutic behavioral services, which are addressed in DMH Letter Nos. 99-03 and 99-04.

If you have questions or need additional information, please contact your liaison in the Technical Assistance and Training Unit.

Sincerely,



STEPHEN W. MAYBERG, Ph.D.
Director

Enclosure

cc: California Mental Health Planning Council
Chief, Technical Assistance and Training

MAY 17 2001

PAI



CALIFORNIA DEPARTMENT OF

Mental Health

1600 9th Street, Sacramento, CA 95814
(916) 654-2309

May 4, 2001

DMH LETTER NO.: 01-02

TO: LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: DIRECTION OF MEDI-CAL MENTAL HEALTH
SERVICES

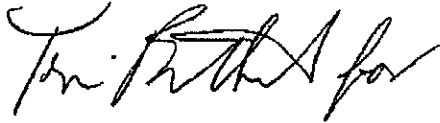
The Department of Mental Health (DMH) is providing the following clarification regarding the direction of specialty mental health services provided by Mental Health Plans (MHPs) as a part of the Medi-Cal Specialty Mental Health Services Consolidation program.

The terms of current year contracts between county Mental Health Plans (MHPs) and the Department of Mental Health (Article V- Duties of the Contractor, Section E- Quality Management) include a requirement that the MHP ensure that all covered services delivered by organizational providers, including the MHP, are provided under the direction of a physician; a licensed/registered/waivered psychologist, clinical social worker, or marriage and family therapist; or a registered nurse. MHPs have the flexibility to determine how the direction of service will be accomplished. Examples of service direction include, but are not limited to: (1) being the person directly providing the service; (2) acting as a clinical team leader; (3) direct or functional supervision of service delivery; or (4) approval of client plans. It should be noted that DMH does not require the person providing direction to be physically present at the service site to exercise direction.

Attachment 3

If you have questions or need additional information, please contact your liaison in the Technical Assistance and Training Unit.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol Hood". The signature is fluid and cursive, with the first name "Carol" being more prominent than the last name "Hood".

CAROL HOOD
Deputy Director
Systems of Care

cc: California Mental Health Planning Council
Chief, Technical Assistance and Training

TITLE 9. CALIFORNIA CODE OF REGULATIONS

Chapter 11. Medi-Cal Specialty Mental Health Services

1810.355. Excluded Services.

(a) MHPs shall not be responsible to provide or arrange and pay for the following services:

(1) Medi-Cal services, which are those services described in Title 22, Division 3, Subdivision 1, Chapter 3, that are not specialty mental health services as defined in Section 1810.247.

(A) Prescribed drugs as described in Title 22, Section 51313, and laboratory, radiological, and radioisotope services as described in Title 22, Section 51311, are not the responsibility of the MHPs, except when provided as hospital-based ancillary services. Medi-Cal beneficiaries may obtain Medi-Cal covered prescriptions drugs and laboratory, radiological, and radioisotope services prescribed by licensed mental health professionals acting within their scope of practice and employed by or contracting with the MHP under applicable provisions of Title 22, Division 3, Subdivision 1.

(B) Medical transportation services as described in Title 22, Section 51323, are not the responsibility of the MHP except when the purpose of the medical transportation service is to transport a beneficiary from a psychiatric inpatient hospital to another psychiatric inpatient hospital or another type of 24 hour care facility because the services in the facility to which the beneficiary is being transported will result in lower costs to the MHP.

(C) Physician services as described in Title 22, Section 51305, that are not psychiatric services as defined in Section 1810.240, even if the services are provided to treat a diagnosis included in Sections 1820.205 or 1830.205.

(2) Out-of-state specialty mental health services except when it is customary practice for a California beneficiary to receive medical services in a border community outside the State.

(3) Specialty mental health services provided by a hospital operated by the department or the State Department of Developmental Services.

(4) Specialty mental health services provided to a beneficiary eligible for Medicare, prior to the exhaustion of beneficiary's Medicare mental health benefits. Administrative day services are excluded only if the beneficiary is in a hospital reimbursed through Medicare (Part A) based on Diagnostic Related Groups (DRGs), when the DRG reimbursement covers administrative day services according to Medicare (Part A).

(5) Specialty mental health services provided to a beneficiary enrolled in a Medi-Cal Managed Care Plan to the extent specialty mental health services are covered by the Medi-Cal Managed Care Plan.

(6) Psychiatric inpatient hospital services received by a beneficiary when services are not billed to an allowable psychiatric accommodation code as defined in Section 1820.100(a).

(7) Medi-Cal services that may include specialty mental health services as a component of a larger service package as follows:

(A) Psychiatrist and psychologist services provided by adult day health centers pursuant to Title 22, Section 54325.

(8) Home and community based waiver services as defined in Title 22, Section 51176.

(C) Specialty mental health services authorized by the California Children's Services (CCS) Program to treat CCS eligible beneficiaries.

(D) Local Education Agency (LEA) services as defined in Title 22, Section 51190.4.

(E) Specialty mental health services provided by Federally Qualified Health Centers, Indian Health Centers, and Rural Health Clinics.

(F) Home health agency services as described in Title 22, Section 51337.

(b) Beneficiaries whose diagnoses are not included in the applicable listing of diagnoses in Sections 1820.205 or 1830.205 may obtain specialty mental health services under applicable provisions of Title 22, Division 3, Subdivision 1.

NOTE: Authority cited: Section 14680, Welfare and Institutions Code.
Reference: Sections 5775, 5776, 5777, 5778, 5780, 14681, 14682, 14683, 14684, 14685, Welfare and Institutions Code.

1830.205. Medical Necessity Criteria for MHP Reimbursement of Specialty Mental Health Services.

(a) The following medical necessity criteria determine Medi-Cal reimbursement for specialty mental health services that are the responsibility of the MHP under this subchapter, except as specifically provided.

(b) The beneficiary must meet criteria outlined in (1), (2), and (3) below to be eligible for services:

(1) Be diagnosed by the MHP with one of the following diagnoses in the Diagnostic and Statistical Manual, Fourth Edition, published by the American Psychiatric Association:

(A) Pervasive Developmental Disorders, except Autistic Disorders

(B) Disruptive Behavior and Attention Deficit Disorders

(C) Feeding and Eating Disorders of Infancy and Early Childhood

- (D) Elimination Disorders
 - (E) Other Disorders of Infancy, Childhood, or Adolescence
 - (F) Schizophrenia and other Psychotic Disorders
 - (G) Mood Disorders
 - (H) Anxiety Disorders
 - (I) Somatoform Disorders
 - (J) Factitious Disorders
 - (K) Dissociative Disorders
 - (L) Paraphilias
 - (M) Gender Identity Disorder
 - (N) Eating Disorders
 - (O) Impulse Control Disorders Not Elsewhere Classified
 - (P) Adjustment Disorders
 - (Q) Personality Disorders, excluding Antisocial Personality Disorder
 - (R) Medication-Induced Movement Disorders related to other included diagnoses.
- (2) Must have at least one of the following impairments as a result of the mental disorder(s) listed in subdivision (1) above:
- (A) A significant impairment in an important area of life functioning.
 - (B) A probability of significant deterioration in an important area of life functioning
 - (C) Except as provided in Section 1830.210. a probability a child will not progress developmentally as individually appropriate. For the purpose of this section, a child is a person under the age of 21 years.
- (3) Must meet each of the intervention criteria listed below:
- (A) The focus of the proposed intervention is to address the condition identified in (2) above.
 - (B) The expectation is that the proposed intervention will:

1. Significantly diminish the impairment, or
2. Prevent significant deterioration in an important area of life functioning, or
3. Except as provided in Section 1830.210, allow the child to progress developmentally as individually appropriate.

(C) The condition would not be responsive to physical health care based treatment.

(c) When the requirements of this section are met, beneficiaries shall receive specialty mental health services for a diagnosis included in subsection (b)(1) even if a diagnosis that is not included in subsection (b)(1) is also present.

NOTE: Authority cited: Section 14680, Welfare and Institution Code.

Reference: Section 5777 and 14684, Welfare and Institution Code.

1830.210. Medical Necessity Criteria for MHP Reimbursement for Specialty Mental Health Services for Eligible Beneficiaries under 21 Years of Age.

(a) For beneficiaries under 21 years of age who do not meet the medical necessity requirements of Section 1830.205(b)(2) and (3), medical necessity criteria for specialty mental health services covered by this subchapter shall be met when all of the following exist:

(1) The beneficiary meets the diagnosis criteria in Section 1830...205(b)(1),

(2) The beneficiary has a condition that would not be responsive to physical health care based treatment, and

(3) The requirements of Title 22, Section 51340(e)(3) are met; or, for targeted case management services, the service to which access is to be gained through case management is medically necessary for the beneficiary under Section 1830.205 or under Title 22, Section 51340(e)(3) and the requirements of Title 22, Section 51340(f) are met.

(b) The MHP shall not approve a request for an EPSDT Supplemental Specialty Mental Health Service under this section if the MHP determines that the service to be provided is accessible and available in an appropriate and timely manner as another specialty mental health service covered by this subchapter.

(c) The MHP shall not approve a request for specialty mental health services under this section in home and community based settings if the MHP determines that the total cost incurred by the Medi-Cal program for providing such services to the beneficiary is greater than

the total cost to the Medi-Cal program in providing medically equivalent services at the beneficiary's otherwise appropriate institutional level of care, where medically equivalent services at the appropriate level are available in a timely manner.

NOTE: Authority cited: Section 14680, Welfare and Institutions Code.

Reference: Sections 5777, 14132, and 14684, Welfare and Institutions Code, and Title 42, Section 1396d(r), United States Code.

1840.312. Non-Reimbursable Services-General.

The following services are not eligible for FFP:

- (a) Academic educational services
- (b) Vocational services which have as a purpose actual work or work training
- (c) Recreation
- (d) Socialization is not reimbursable if it consists of generalized group activities which do not provide systematic individualized feedback to the specific targeted behaviors of the beneficiaries involved.
- (e) Board and care costs for Adult Residential Treatment Services, Crisis Residential Treatment Services, and Psychiatric Health Facility Services.
- (f) Medi-Cal program benefits that are excluded from coverage by the MHP as described in Section 1810.355.
- (g) Specialty mental health services covered by this article provided during the time a beneficiary 21 years of age through 64 years of age resides in any institution for mental disease.
- (h) Specialty mental health services covered by this article provided during the time a beneficiary under 21 years of age resides in an institution for mental disease other than psychiatric health facility that is a hospital as defined in this chapter or an acute psychiatric hospital, except if the beneficiary under 21 years of age was receiving such services prior to his/her twenty-first birthday. If this beneficiary continues without interruption to require and receive such services, the eligibility for FFP continues to the date he or she no longer requires such services, or if earlier, his/her twenty-second birthday. These restrictions regarding claiming FFP for services in an institution for mental disease shall cease to have effect if federal law changes or a federal waiver is obtained and reimbursement is subsequently approved.
- (i) The restrictions in subsections (g) and (h) regarding claiming FFP for services to beneficiaries residing in institutions for mental disease shall cease to have effect if federal law changes or a federal waiver is obtained and claiming FFP is subsequently approved.

(j) Specialty mental health services that are minor consent services as defined in Title 22, Section 50063.5 to the extent that they are provided to beneficiaries whose Medi-Cal eligibility pursuant to Title 22, Section 50147.1 is determined to be limited to minor consent services.

NOTE: Authority: Section 14680, Welfare and Institutions Code.

Reference: Sections 5778, Welfare and Institutions Code.

1840.314. Claiming for Service Functions-General,

In order to receive FFP for provider payments made by the MHP or for services delivered directly by the MHP, the MPH must assure that the following requirements are met for all service functions:

(a) The provider must meet the applicable standards for participation in the Medi-Cal program as established under Titles XVIII and XIX of the Social Security Act.

(b) Contacts with significant support persons in the beneficiary's life are directed exclusively to the mental health needs of the beneficiary.

(c) When services are being provided to or on behalf of a beneficiary by two or more persons at one point in time, each person's involvement shall be documented in the context of the mental health needs of the beneficiary.

(d) Services shall be provided within the scope of practice of the person delivering service, if applicable.

(e) Hospital outpatient departments as defined in Title 22, Section 51112, operating under the license of a hospital may only provide service functions in compliance with licensing requirements.

NOTE: Authority: Section 14680, Welfare and Institutions Code.

Reference: Section 5778, Welfare and Institutions Code.

1840.316. Claiming for Service Functions Based on Minutes of Time.

(a) For the following services the billing unit is the time of the person delivering the service in minutes of time:

- (1) Mental Health Services
- (2) Medication Support Services
- (3) Crisis Intervention
- (4) Targeted Case Management

(b) The following requirements apply for claiming of services based on minutes of time:

(1) The exact number of minutes used by persons providing reimbursable services shall be reported and billed. In no case shall more than 60 units of time be reported or claimed for anyone person during a one-hour period. In no case shall the units of time reported or claimed for anyone person exceed the hours worked.

(2) When a person provides service to, or on behalf of, more than one beneficiary at the same time, the person's time must be prorated to each beneficiary. When more than one person provides a service to more than one beneficiary at the same time, the time utilized by all those providing the service shall be added together to yield the total claimable services. The total time claimed shall not exceed the actual time utilized for claimable services.

(3) The time required for documentation and travel is reimbursable when the documentation or travel is a component of a reimbursable service activity, whether or not the time is on the same day as the reimbursable service activity.

(4) Plan development for Mental Health Services and Medication Support Services is reimbursable. Units of time may be billed regardless of whether there is a face-to-face or phone contact with the beneficiary.

NOTE: Authority: Section 14680, Welfare and Institutions Code.

Reference: Section 5778, Welfare and Institutions Code.