State of Vermont

Agency of Human Services

Public Comment Submitted and AHS Response Regarding Global Commitment to Health 11-W-00194/1

Section 1115(a)
Demonstration Waiver Extension Request
Posted for Comment
(2/14/2013– 3/22/2013)

April 5, 2013

Global Commitment to Health Demonstration Extension Request Public Notice Process

Outlined below is a summary of 42 CFR 431.408 public process requirements and how the state has complied with federal regulations. Also included are comments received, the state's response and changes to the waiver that were made as a result of the public process.

Public Comment Period: The CFR requires a 30 day comment period. The State's public comment period on the Global Commitment to Health 1115 Waiver Renewal request was from February 14 through March 22, 2013.

Public notice of the application: On February 13, the draft *Global Commitment to Health* Waiver Renewal Request, the public notice, and executive summary of the draft, were posted online. Materials were available on the following websites: DVHA, the Agency of Human Services, the Agency of Administration Health Care Reform home pages. All *Global Commitment to Health* Waiver documents, including renewal information are available year round at http://dvha.vermont.gov/administration/2013-global-commitment.

On February 14, a public notice was published in the Burlington Free Press noticing the availability of the draft renewal request, two public hearings dates, the online website, and the deadline for submission of written comments with contact information. Additionally, all district offices of the Department for Children and Families' Economic Services Division, the division responsible for health care eligibility had notice posted and proposal copies available, if requested. The Burlington Free is the state's newspaper with the largest statewide distribution and paid subscriptions. Additional public notices were published in Vermont's other newspapers of record, including the Valley News, The Caledonian Record, St. Albans Messenger, Addison Independent, The Bennington Banner, Newport Daily Express, The Islander, Herald of Randolph, and the News and Citizen, between February 16-20th. This distribution list represents all geographic regions of the state.

On March 1, a public notice and link to the renewal documents was included on the banner page for Vermont's Medicaid provider network.

Comprehensive description of the proposed waiver extension: The State posted a comprehensive description of the proposed waiver request on February 13, 2013 on the above-cited websites. The document included: program description, goals and objectives; a description of the beneficiary groups that will be impacted by the demonstration; the proposed health delivery system, benefit and cost-sharing requirements impacted by the demonstration; estimated increases or decreases in enrollment and in expenditures; the hypothesis and evaluation parameters of the proposal; and the specific waiver and expenditure authorities it is seeking. In addition to the draft posted for public comment, an Executive Summary and the PowerPoint presentation used during each public hearing was also posted to the same state websites noted above.

Public Hearings: The State convened to two public hearing on the Global Commitment to Health 1115 Waiver renewal request.

On February 19 from 3:30pm-5:30pm, a public hearing was held using videoconferencing at Vermont Interactive Television (VIT) sites in Bennington, Brattleboro, Johnson, Lyndonville, Middlebury, Newport, Randolph Center, Rutland, Springfield, St. Albans, White River Junction, Montpelier, and originating in Williston.

On March 11 from 11:00am-1:00pm, a public hearing was held during the Medicaid and Exchange Advisory Board meeting in Winooski, with teleconferencing available for individuals who could not attend in person.

On March 14, an informational presentation (with a question/answer period), of the Global Commitment to Health Waiver Renewal request was given at the Department of Disabilities, Aging, and Independent Living (DAIL) Advisory Board meeting in Berlin, Vermont.

Use of an electronic mailing list to notify the public: On February 13, the Draft *Global Commitment to Health* Waiver Renewal Request was distributed simultaneously to the Medicaid and Exchange Advisory Board, the committees of jurisdiction in the Vermont legislature, the DAIL Advisory Board, Department of Children and Families (DCF) District Offices, Dual Eligible Demonstration Stakeholders, DMH, VDH and other external stakeholders as well as internal management teams from across AHS.

Tribal Government Notification: The State of Vermont has no federally recognized Indian tribes or groups.

Public Comments and Associated Responses

Public Hearing Comments:

Q. Several Stakeholders asked if the Dual Eligible Demonstration would be included in this waiver request.

A. No. The state continues to negotiate and work with CMS regarding the duals demonstration; the state currently manages the Medicaid portion of care related to dual Medicaid and Medicare beneficiaries as part of both the GC and the Choices for Care waiver. Should the state finalize a demonstration project with CMS we would seek maximum alignment of policy and rules, and look to CMS to provide guidance regarding any needed changes. Any demonstration agreement and formal MOU would be outside of this current waiver request.

Q. Will the Governor's proposed 3% cost of living increase for provider rates be included in assumptions? What accounts for the jump in projected Medicaid spending in 2016 and 2017?

A. The projections in the draft posted for comment do not carry forward the proposed increase in reimbursement rates. However before a final request is submitted to CMS all financial projections will be adjusted to reflect the annual inflationary rate increase as well as any other financial driver that was not known at the time the draft was written.

The projected increases in 2016 and 2017 represent provider rate increases to 105% of Medicare for acute care services managed by DVHA and the enrollment projections that were outlined in the UMASS Single Payer Finance Report.

Q. Is Choices for Care currently operated as a Managed Care Organization? If Choices for Care becomes part of Global Commitment to Health Waiver, will it become part of the MCO and if so can a PMPM type of provider reimbursement methodology be used for Choices for Care providers?

A. Choice for Care is not currently operating using a formal MCO model. The state may request modifications to traditional Medicaid payment models under any 1115 demonstration. If the waivers are consolidated the Choice for Care delivery system would have the same flexibility to explore various provider payment models as used in Global Commitment Demonstration. This could include a sub-capitated PMPM model for provider payments.

Q. The Global Commitment Waiver Renewal Summary mentioned that MAGI might be applied for other Medicaid groups, but aren't we using MAGI for everyone anyways?

A. Vermont's pharmacy only benefit programs currently use the same eligibility rules as VHAP. With the state's elimination of the VHAP program we would like to align all demonstration populations (with the exception of long term care) under the same eligibility structure. In doing so the state is requesting the flexibility to extend MAGI to SSI-related Medicaid determinations as well. Final implementation of such an option would be based on legislative direction following a full review of impact.

Q. Please explain the request for enhancement to the home and community based services benefit currently provided to CRT consumers in DMH.

A. Prior to the 2005 Global Commitment waiver, the state had an 1115 demonstration waiver that allowed the DMH to operate using a Medicaid Managed Care framework for the CRT program. This included establishing a PMPM payment methodology that took into account the provision of ALL services regardless of whether they provided in home, community, residential and/or inpatient settings. This methodology also allowed the DMH to establish and pay for a full continuum of services including those not traditionally found in a Medicaid State plan. While it was acknowledged that all former 1915 (c) and 1115 delivery system enhancements were "rolled into" the 2005 Global Commitment waiver, the state would like to clearly establish this allowance and extend it to any Medicaid beneficiary needing intensive mental health interventions regardless of the setting.

Written Comments and Questions: All written comments and questions are attached. Summarized below are the state's responses including modifications, if any, that the state made to the final proposal as a result of the input. Several stakeholders made comments related to the Dual Eligible Demonstration, however, because the Duals is a separate CMS negotiation and ultimately a separate agreement, those comments will not be addressed in this summary or renewal request

1. The Support and Services At Home (SASH) project is a formal partner with DAIL, DVHA and the Blueprint Community Health Teams to provide proactive supports to seniors that will allow them to stay in their home and community settings as long as medically possible. Project staff asked that specific edits be made to the renewal narrative to describe the program.

A. The state has accepted a few edits that were submitted, however the state has many partners in success and to list all such projects in this narrative would be unrealistic. The state is proud of the many innovative community efforts in place across Vermont.

2. The Vermont Association of Hospital and Health Systems (VAHHS) noted that this waiver extension request fails to clarify how the state plans to "begin the groundwork for a fully-integrated single payer system" and concurrently participate in the recently awarded State Innovation Model (SIM) grant, which builds upon the recent CMS approved Medicare Shared Savings Program Accountable Care Organization (ACO). They asked for clarity in how these efforts align to create a more efficient, aligned delivery infrastructure to care for the Medicaid, Medicare and commercial populations. Many specific questions were asked related health care reform and programmatic efforts.

   A. The state appreciates the complexity of the health care reform tasks ahead. However, we do not see these projects as mutually exclusive. The Global Commitment waiver renewal gives us the flexibility to continue many of the current reforms while the State Innovative Model grant provides us the opportunity to do the planning and dialogue necessary to answer many of the programmatic and performance measurement questions outlined in this comment letter. It will allow us to implement a pilot that will inform the state's future efforts.

   This waiver is not intended to answer questions about Vermont's transition to a single payer health system other than acknowledging the financial impact of that transition for Medicaid enrollment and expenditures. This is intended to allow the state to continue the reforms already in place and build on them as we move forward. Alignment with the final single payer plan, as approved by the Vermont Legislature, will likely require an amendment to the waiver in future years. Such an amendment would be sought at the direction of and as defined by the legislature at that time.

3. The VAHHS also noted frustration with what they characterized as DVHA's incomplete attention to due process and notice of changes. Specifically related to state plan and other policy changes and provider audit and appeals process. VAHHS suggests that DVHA's request to simplify the state plan amendment and reporting process should be conditioned on the requirement that a coverage or payment policy is not effective unless it has had at least a 30-day public notice and comment period. Additionally VAHHS recommends that DVHA's request to streamline the regulatory structures should be conditioned on the implementation of a provider appeals process that is similar to Medicare and other states' Medicaid appeals processes including the opportunity for an independent administrative hearing.

   A. The state agrees that a clear and consistent public engagement, notice and provider audit and appeals process is desirable for policies and changes. The implementation of a state provider review process is outside the purview of the Global Commitment

waiver; however DVHA is actively working with providers to adopt state specific processes that meet these needs.

4. The Vermont Legal Aid (VLA) raised concerns that the state should not restrict benefits for existing beneficiaries and in particular mandatory eligible and children's EPSDT benefits.

    A. Benefit restrictions on the mandatory populations would need to be approved by the legislature. We are not requesting a waiver from EPSDT regulations; the waivers that we are requesting are included in the draft.

5. The VLA and its Senior Law Project have separately asked that the waiver include specific references to state statutes related to Choices for Care reinvestments and home and community services.

    A. This is redundant with state authority and Legislative process. Where no federal requirements exist the waiver states that these programs are governed by state policy and rule. We feel this is sufficient and allows policy decisions to remain the purview of the state's executive and legislative branches.

6. The VLA and its Senior Law Project separately requested retention of the Choices for Care STC which states that "funding equivalent to 100 slots be added each year to expand the home and community based services".

    A. We agree that the goal of the Demonstration is to serve more people, not fewer. We do include language that notes that this is accomplished through the flexible, cost effective investment in long-term service and support innovations such as expanding community-based housing options and health promotion. The reference to 'slots' is antiquated and unnecessarily restrictive.

7. The VLA Senior Law Project has requested that waiver terms define a methodology for calculating savings and require reinvestment in home and community based services (and not nursing facility or institutions).

    A. This is a state decision and policy, and should remain the purview of the Legislature.

8. The Vermont Legal Aid Senior Law Project requests that the Moderate Needs Groups under Choices for Care be administered by DVHA and be unrestricted in enrollment and funding. The VLA asks that funds be distributed to consumers rather than as limited allocations to local providers.

    A. While admirable, this is an unrealistic request. The state does not have the funding or staffing to expand these waiver services to beneficiaries.

9. The VLA Senior Law Project requests more detail related to administrative streamlining and how that will change the long term services and DAIL's oversight.

    A. The intention of the state is to streamline how the state reports to CMS and the CMS approval processes for services. Specifically, to use the more simplified

quarterly reporting formats developed under Global Commitment, to adopt one regulatory structure, 42 CFR 438 for all populations and programs, and streamline the state plan process. Additionally, many of the innovations the state has adopted while in state statute, rules or guidelines, are not found in the state plan (home and community based services) nor do they employ traditional provider payments. As the state moves further into health care reform, service delivery approaches will become more flexible and unique to Vermont. Thus the state is requesting an alternative to the state plan amendment process. As noted earlier, the state would like the flexibility to adopt a legislatively approved public engagement process that does not rely on CMS action for payment reforms, the use of non-traditional health care strategies and population based health improvements.

The state has no intention of changing the DAIL oversight model or to restrict the programs and benefits currently operated under the Choices for Care waiver

10. The VLA requests that the state guarantee that beneficiaries and applicants continue to have access to advocates by including this advocacy system in the renewal request. Independent advocacy is an integral part of any effective health care delivery system.

    A. The state agrees that beneficiaries and applicants continue to have access to independent advocates and does not plan to eliminate this aspect of our model.

11. The VLA requests that ESI Premium Assistance be added to the narrative as a 'state only program'.

    A. The reference is indicating that the Vermont Health Connect allows qualified employees or their dependents to enroll in or change from one QHP to another as a result of various triggering events. One of those events is the qualified employee or dependent becoming eligible for premium assistance with a small employer plan under the Health Insurance Premium Payment (HIPP) program or other such Medicaid or CHIP option.

12. The VLA notes that Section 34(b)(8) of Act 171 requires the waiver request to "ensure affordable coverage for individuals who are eligible for Medicare but who are responsible for paying the full cost of Medicare coverage due to inadequate work history or for another reason." The draft waiver proposal does not mention this population, or explain how the state intends to comply with the statutory mandate. We urge you to remedy this omission.

    A. We will add this request to the premium assistance section in the waiver narrative.

13. The VLA requests that any use of MAGI rules for SSI related Medicaid by prohibited if it is adverse to any individual consumer.

    A. The state is requesting the flexibility to extend MAGI to other eligibility (except long term care) groups this could include SSI-related Medicaid determinations. Any final implementation of such an option would be based on Legislative direction following a full review of impact.

14. The VLA is requesting that beneficiaries whose spend down period ends before March 1, 2014 have their Medicaid coverage continued until the extended safe harbor review date.

    A. Our transition plan calls for structuring spend downs in the latter part of 2013 such that there will be no medically needy in MAGI-based coverage on January 1, 2014. The plan is currently before CMS's Eligibility Division for their review and approval. There are no changes currently planned for implementation in SSI-related medically needy coverage.

15. The VLA has asked that more specificity be added related to waiver authorities.

    A. These authorities and their associated descriptions are written by CMS. After full discussion of the request and the intended goals, CMS reviews and identifies what waivers are necessary for the state to carry out its program. CMS has ultimate authority in what is granted and for what purpose. The waivers listed in this proposal have been in existence since 2005 and 2007 (for Catamount/ESI programs) the state is asking for continuation of all and will CMS determine which ones no longer apply. A brief overview of how they have been used and responses to certain VLA concerns is provided below.

        i. *Hearings and Appeals* – This waiver allows the state to use the exhaustion of administrative appeals process if it desires, the state rules currently do not require exhaustion of administrative appeal as allowed by the MCO rules. The state has had this option since 2005, whether or not to implement is a state decision and the state should retain the flexibility.
        ii. *Reasonable Promptness* – This waiver has been in place since 2005 and allows the state to implement Choices for Care waiting list, if needed, due to budget constraints.
        iii. *Amount, Scope and Duration* – This waiver has been in effect since 2005 and allows the state to: offer limited benefits such as VHAP to expansion populations; offer 1915 (c) like services in DAIL and DMH; create pilots to test new and innovative service approaches; and provide expanded services to consumers. This waiver as written by CMS does not allow the state to create restrictions that would be out of compliance with federal EPSDT or federally mandated benefits. The state should retain the flexibility to provide all home and community based services that it has had since 2005 under GC and for several decades prior to 2005 in the 1915 (c) waivers.
        iv. *Financial Responsibility/Deeming* – The state is not seeking authority to change, restrict or expand current eligibility requirements.
        v. *Spend Down* - The state is not seeking authority to change or expand long term care eligibility requirements. We will look to CMS for guidance on any changes necessary to implement the requested expansion of the hospice benefit.
        vi. *Freedom of Choice* – This waiver has been in place since 2005 and for decades prior related to all former 1915 (c) service recipients. Using specialty providers in a variety of circumstances (transportation brokers) and as required in Vermont statute (Designated Agencies, Home Health

Agencies, Area Agencies on Aging, etc.) it is a key aspect of Vermont programs and we wish to retain all current and long standing flexibilities.

vii. *Premium Requirements* – This is a continuation of current authorities, CMS will determine if it is needed to address premium cost sharing as proposed in this renewal request.

viii. *Retroactive Eligibility* – This is a continuation of current authorities, the state plans no change to the current system.

ix. *Cost Sharing* – This is a continuation of current authorities, CMS will determine if it is needed.

x. *Direct Provider Reimbursement* - This is a continuation of current authorities, CMS will determine if it is needed

16. The VLA Senior Law Project expressed concern that consolidation of the two waivers would cause erosion of the long term care program and have requested STC's that require all programs to remain the same and current beneficiaries to be grandfathered in to any new system. Additionally, they request that beneficiary protections and beneficiary notice requirements also be listed in the STC's.

    A. The state does not intend to change current programs, benefits or eligibility requirements; any such changes in underlying structure would require state legislative changes and as such would be fully vetted with the public.

    The beneficiary protections currently outlined in the Choices for Care waiver are addressed in the Medicaid regulations related to MCO operations. One overarching goal of the federal Medicaid Managed Care regulation is to ensure that beneficiaries have robust protections from HMO's and commercial insures who may be inclined to restrict services in order to increase profits. All of these protections and notice requirements are in federal regulation and will extend to Choices for Care population if the waivers are consolidated and should provide the same or more due process, notice, grievance, appeal, member education and outreach than are currently outlined for Choices.

17. VLA Senior Law Project requests the elimination of the authority to have a waiting list for High Needs groups.

    A. The state, as you noted, has been successful in reducing and eliminating the waiting list whenever possible. However, it is fiscally prudent to have this mechanism available should economic conditions warrant budget rescissions or reductions.

18. VLA Senior Law Project comments that long term care application processing is insufficient and should be simplified; they also request that presumptive eligibility be expanded in this waiver request.

    A. The state can implement presumptive eligibility without waiver authority and has been doing so based on availability of legislative appropriations. Expansion is a legislative budget item and not a federal waiver provision.

19. VLA Senior Law Project notes that ACA creates a “MAGI cliff” and requests that the state address this in its waiver request.
    A. We will explore this issue further and work with CMS to determine if any proposed remedy is within the purview of the Global Commitment waiver.

20. VLA Senior law Projects requests no changes be made to medically needy spend down and deeming rules.
    A. The state is not requesting changes to these rules.