

VERMONT ASSOCIATION OF HOSPITALS AND HEALTH SYSTEMS

September 19, 2003

Patrick Flood, Commissioner
Department of Aging and Disabilities
Commissioner's Office
103 South Main Street
Waterbury, VT 05671-2301

Dear Commissioner Flood:

Thank you for the opportunity to comment on the draft 1115 waiver proposal to create a unified long term care Medicaid budget.

As I understand it, the waiver will create an entitlement to all long term care services, including home and community-based services. Under the current system, only nursing home care is covered by the entitlement. In exchange for this flexibility, the federal government will cap the dollars available to Vermont for long term care Medicaid services. If more people choose nursing home care than you expect, or if the total number of people eligible for Medicaid long term care services exceeds your projections, Vermont will exceed the cap. If that happens, monies to pay for the services will have to come from the general fund. To help offset that risk, the waiver seeks to increase the clinical eligibility criteria for long term care, reducing the total number of Vermonters "entitled" to long term care services. Those entitled to long term care services under the new program will have more acute needs than many of those currently entitled to long term care services. The Department of Aging and Disabilities (DA&D) hopes to use savings from the new program to serve Vermonters not entitled to services under the waiver.

The proposal is much as you describe. However, the proposal actually plans on increasing the number of people entitled to long-term care services by opening the entitlement to individuals who elect to receive their care in a home or community-based setting. Today only the 2200 people in nursing homes on Medicaid are entitled; under the proposal approximately 3000 people will be entitled – those who choose nursing home care and those who choose care in a home or community-based setting. However, this does mean that there must be some mechanism to manage the entitlement, which we have done by slightly modifying the criteria for the Highest Need group.

The Vermont Association of Hospitals and Health Systems (VAHHS) supports increasing consumer choice and managing costs, but we have some questions and concerns regarding the proposal.

Our specific comments and concerns include the following:

Access to Services

- The waiver will reduce the total number of Vermonters clinically eligible for long term care services by several hundred. DA&D hopes to serve some of those no longer covered by the entitlement using the savings achieved by the program. However, ***the Legislature is under no obligation to appropriate funds to serve those who are not eligible.*** If they do not, ***fewer Vermonters will have access to services*** than do today. There are many examples, including 1995's Act 160, of earmarked funds being raided for other purposes, particularly in difficult fiscal

times. We are concerned that patients who will be considered ineligible for long term care services under the new program will fill more acute care beds in hospitals as hospitals attempt to make other arrangements for their ongoing care.

While such a scenario is theoretically possible, we believe the Vermont legislature understands the policy and fiscal imperative behind the proposal and we are confident the legislature will not take actions to cause it to fail, or to cause increased additional problems for other parts of the care system. In addition, we believe that we will have the funds to serve all the “entitlement” group (Highest Need) and also have funds to serve most, if not all, of the High Need group. Overtime, we assumptions should realize cost savings so we can then provide services to the Moderate Need group.

We want to reiterate that changes under this program will be gradual. We do not expect to see more individuals waiting in hospital than we see today.

- On page 6, the proposal states that “today, approximately 2200 individuals are benefiting from the entitlement to nursing facility care. Under this change, Vermont projects that nearly 3000 individuals will benefit from this entitlement.” What is not included in this section is the number of people who are receiving benefits under the current waiver slots program. Presumably those people are not technically “entitled” to services. The proposal fails to say that, on balance, several hundred ***fewer individuals will be entitled to services than are eligible today.*** By my reading, that point is not made elsewhere in the document either.

Again, more people will have an entitlement because this group will include those who choose home- and community-based care, not just those who choose nursing home care. Today, no one on the Home Based Waiver is entitled to services. When reductions in expenditures became necessary last year, they came from the Waiver program, not nursing homes. Many individuals today are “eligible” for the Waiver but unable to access services. The Department believes this proposal is the only way to correct those inequities. As stated in the proposal, we fully believe that we will serve more people under this proposal.

- On page 9 the proposal says, “state staff will make every effort to assess Medicaid eligible persons prior to discharge from a hospital, but assessment will not delay appropriate discharge.” VAHHS supports that approach.

Financing and Payment Structure

- What will be the impact of this new program on the allocation of Federal funds drawn down through the use of the provider tax? Currently, nearly all of those dollars are helping to fund the nursing facility rate inflation factor. On page 25 the proposal states “[Nursing facilities] will continue to be reimbursed on a per diem basis at rates established by the Division of Rate Setting” but makes no mention of the use of the provider tax funds.

This proposal has no implication for current revenues and revenue sources.

- The program’s success is predicated on the notion that long term care is less expensive to provide in home and community-based settings. However, we have not seen a detailed analysis of this issue from DA&D. We understand that you do not expect to have that data for several months. That information is important to any analysis of whether or not this proposal will have the impact on the budget that you intend.

Since the budget for this proposal only includes those dollars dedicated to nursing home care and the two home- and community-based waivers, costs such as housing, transportation, food, etc. in home- and community-based settings will have no impact on this budget. We do recognize that those costs are sometimes borne by the taxpayers and sometimes by family and friends; however, they will not have an impact on the 1115 Waiver budget.

- On page 16 the proposal state that AHS will provide a global budget to DAD, "equal to the per member per month fee for services equivalent cost . . . times the number of enrollees. This ensures the Agency will be at risk for the cost of services but will not be at risk for the number of eligible persons." This language seems contradictory to page 31 which says "Vermont's demonstration will use an aggregate, rather than per capita, budget neutrality test." It also seems to contradict comments I have heard you make in presentations.

It is our understanding that you have had communication with the financial consultants on the proposal and that this issue was clarified in the final document. The state is requesting an aggregate cap, as we have had for our HCBS Waiver to date.

- On page 18 there is a reference per day co-payments for nursing homes services. Is that a reference to the current patient share structure or a proposal for new co-payments? How would co-payments affect the current rate-setting system already in place? It was my understanding that the rate setting and reimbursement systems for nursing facilities would not change under this proposal.

This was an error in the draft. There is no change in nursing home funding, and no co-payment for people in nursing homes. There will be no change in the calculation of patient shares.

Quality Oversight

We are concerned that the quality oversight program has not yet been developed in any detail. An effective system for monitoring the care people are receiving, particularly care they are receiving in their homes, is critical to insuring the well-being and safety of Vermonters in the program. We will be participating in the quality oversight workgroup meetings your department has set up.

The Department is deeply committed to high quality in home-based services. While we believe there is very high quality now, we agree that we can and should do more under the new proposal.

Legislative Authorization

On page 2, the proposal states that "the Legislature has authorized the Agency to seek whatever federal waivers might be necessary to support development of a stronger HCB service infrastructure within the state." That language implies recent authorization to seek this particular waiver and is perhaps an overstatement. While you have briefed the Health Access Oversight Committee, DA&D have not sought or received specific authorization for this proposal. As I understand it, the authorization the proposal refers to is from legislation in the mid-eighties regarding the 1915c waivers and possibly from Act 160.

We agree that legislative language is not as explicit as the draft may have suggested. However, we believe that Act 160 clearly set a state policy which is not only consistent with the proposal, but which actually led to the proposal.

Thank you for considering these questions and concerns. We look forward to working with you to ensure that the continuum of long term care services available to Vermonters remains strong and that they have access to the long term care services they need.

Sincerely,

Jill Mazza Olson
Vice President of Continuing Care and Quality
Vermont Association of Hospitals and Health Systems

cc: Senator Susan Bartlett
Representative Thomas Koch
Senator James Leddy
Representative Pat O'Donnell
Senator Richard Sears
Representative Richard Westman
Secretary Charles Smith