



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE COMMISSIONER

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September 21, 2020

Ms. Anne Marie Costello, Acting Deputy Administrator and Director
Center for Medicaid and CHIP Services (CMCS)
Center for Medicaid and Chip Services
7500 Security Boulevard
Baltimore, Maryland 21244

Dear Ms. Costello:

Please accept this letter as New Hampshire's request to extend the date, from August 31, 2021 to July 1, 2023, for which the state of New Hampshire must meet Home and Community Based Services (HCBS) waiver Conflict of Interest and Direct Billing requirements. Deborah Scheetz, Director of Long Term Supports and Services, along with Sandy Hunt, Bureau Chief for the Bureau of Developmental Services (BDS), and Jennifer Doig, Business Manager for BDS, had a call with Christopher Semidey and Ciera Lucas from the Center for Medicaid and Medicare (CMS) on Wednesday, August 26, 2020, to discuss the state's accomplishments to date and to review the barriers to successful system change by August 31, 2021. Below, please find a summary of the state's process and progress to date, as well as the barriers to successful implementation, as part of this request for an extension.

Background

New Hampshire is currently under a Corrective Action Plan (CAP) relative to three of the state's 1915 (c) Home and Community Based Services (HCBS) waivers through the Center for Medicare and Medicaid Services (CMS). The three 1915 (c) waivers under this CAP are: NH.0053 Developmental Disability (DD), NH.4177 Acquired Brain Disorder (ABD), and the NH.0397 Children's In-Home Support Services (IHS).

The focus areas of the CAP are:

1. Conflict of interest regarding the provision of case management and direct service delivery; and
2. Compliance with Direct Pay rules, which allow qualified Medicaid providers to bill directly to the state.

The Department of Health and Human Services has worked closely with CMS regarding compliance dates for the CAP. The Department has engaged in monthly meetings with our federal partners, provided progress reports on a quarterly basis, and provided CMS with access to all information on elements of the CAP implementation plan. The Department has also worked in close partnership with NH stakeholders, including people receiving services, their families, providers, and other advocates within the state, to move the CAP forward, while supporting a transparent change management approach and robust opportunity for feedback. The approach has been mindful of the compliance due date while balancing the change to ensure system stability and quality outcomes for those served. To view the information on New Hampshire's progress to date please visit the Department's web site at <https://www.dhhs.nh.gov/dcbcs/bds/coi-cap.htm>.

Compliance Date

New Hampshire is one year away from the effective compliance date and has experienced unprecedented and unanticipated challenges since March 2020. The COVID-19 Emergency has challenged our state's resources; the very same resources that are engaged in successfully executing the CAP. Since March, 2020, BDS, providers, the people NH serves, and their families have adapted to the new normal caused by the pandemic. In order to ensure the continued health and welfare of those served, the state is requesting a revised date for compliance of July 1, 2023.

COVID-19 Emergency Impact – Keeping People Safe, Competing Priorities, Provider Stability, Revenue Shortfall, and Budget Reductions

NH's developmental services system had 39 individuals test positive for COVID-19 between 4/8/20 and 7/6/20. Three individuals that tested positive passed away between 4/6/20 and 4/21/20. Nearly 100 support staff for people supported by the developmental services system tested positive during this same timeframe. The state's Organized Health Care Delivery System (OHCDS), comprised of 10 area agencies, worked in collaboration with the Department, providers, and local community resources to ensure the health and welfare of these individuals; as well as all other at risk people and families supported by the developmental services system. People stayed at home per the state's emergency order and flexibilities were implemented per the state's Appendix K as approved by CMS. From March until August, the developmental services system has been hard pressed to move forward substantially on the CAP timeline for deliverables as the system, which is the safety net for so many served, reinvented itself and adapted to the COVID-19 Emergency.

Leadership for the CAP implementation at BDS was forced to shift priorities from the CAP to manage to the Appendix K submission and approval by CMS, day to day operations to ensure the safety of those we serve, crisis management for those diagnosed COVID-19 positive, waiver renewals for the IHS, DD, and ABD waivers, as well as CMS quality and 372 submissions. Some BDS staff had to exercise leave due to the COVID-19 Emergency, while other staff were redeployed to the state's Emergency Operations Center to assist with the Personal Protective Equipment (PPE) efforts, contact tracing, developing shelter options, and more. The COVID-19 Emergency strained the Department's infrastructure and continues to require attention as NH considers reopening guidance for providers, telehealth models, and other options for continued continuity in care; especially as schools throughout the state consider hybrid and/or remote schooling models for fall 2020.

At the same time, Crotched Mountain, one of NH's first home and community based providers of services with the closing of the Laconia State School, is discontinuing operations for adult residential services effective November 1, 2020. This closure is applying additional pressure to safely transition those served to other providers while still allowing for choice and effectuating person centered planning. Agencies are working tirelessly to start services and providers are very much engaged in supporting these efforts. In SFY20 Quarter Three, with the surge experienced in NH, many individuals that were planning to enter into services were delayed or chose to delay starts. The end result is that the system is still under pressure to begin service delivery for individuals in need of services from Quarter Three SFY20 and it is anticipated that this will remain operationally challenging for another 4-6 months. The same people that support the implementation of services are key stakeholders for the CAP implementation at both the area agency and provider agency levels.

During the past six months, the timeline called for BDS to conduct rate modeling with our area agency partners and providers. Due to demand on all three parties, the rate modeling has been delayed with agencies and providers, thus delaying vital feedback on rate development and analysis to be sure the rates are appropriate to sustain and attract providers that will ensure efficient, quality care within the different geographic areas within the state. Agencies and providers are expressing sincere concern to complete this timely based on the new dates BDS has targeted.

A downstream impact from the COVID-19 Emergency is that the state is experiencing a significant revenue shortfall which could negatively impacting the SFY21 budget as well as the biennium budget being developed for SFY22-23. A major pillar for the CAP is the successful and timely implementation of the BDS Information Technology (IT) system. The Bureau has requested capital funding for this system development since BDS does not currently have an IT system. A consultant was secured to create a requirements document coincident to the CAP effort and this has been completed, but implementation funding has not been secured to issue a Request for Proposal; and, funding set aside for some advance work for direct billing efforts is at risk with the state's revenue shortfall. BDS may not receive funding and the IT system may be postponed. Our technology partners have been focused on moving the entire Department's operation to remote capacity, as well as creating a COVID dashboard and effectuating technology implementations that are unexpected as a result of the COVID-19 Emergency. NH's Department of Health and Human Services is in the process of beginning submissions for the SFY22-23 biennium budget, which requires a 15% reduction.

In summary, the COVID-19 Emergency has required NH to prioritize the health and welfare of those served by the developmental services system and to respectfully request a revised compliance date of July 1, 2023.

Action Taken Thus Far

The Bureau of Developmental Services, per the timeline, has made gains as follows:

- A Provider Directory (NH Servicelink) has been identified as the tool that will be used for Provider Selection; this complies with the "choice of provider" requirements by CMS.
- BDS has completed a statewide mapping exercise to identify the areas of non-compliance and has developed an Only Willing and Qualified Provider (OWQP) Policy which outlines criteria for areas that have limited capacity of providers. CMS has approved this policy.
- BDS has amended its Governance Audit process to monitor areas of non-compliance.
- The state, in collaboration with area agencies and provider agencies, has finalized a list of tasks or required actions in order to receive the fiscal management services (FMS) Medicaid Administrative rate that will be offered through the contract Area Agencies have with the state.
- One rate modeling exercise has been completed among the area agencies, assisting the Bureau in identifying areas of focus relative to the unbundling of administrative and direct service rates.
- The state, in collaboration with area agencies and provider agencies, has finalized a list of tasks for case management/service coordination and is in the final stages of completing the breakout of these case management/service coordination tasks from the list of tasks for the state's Organized Health Care Delivery System (OHCDS) designated area agency delivery services (DAADS) Medicaid administrative rate.
- The state has reviewed state statute RSA (revised statute annotated) 171-A to allow for the unbundling of case management and direct services within the NH Organized Health Care Delivery System (OHCDS).
- Over the next month, DHHS is positioned to begin training provider agencies to become Medicaid enrolled providers in preparation for the implementation of provider direct billing.
- Over the next couple of months, the state's Medicaid Management Information System (MMIS) provider will complete changes to MMIS for developmental services enrolled Medicaid Providers to direct bill, once the current providers are enrolled.

Unavoidable Delays/Barriers

Moving forward, there are other unavoidable delays and potential barriers to meeting the current CAP compliance date as follows:

- The Department and developmental services system, inclusive of area agencies and providers, continue to support people and their families as they cope with the pandemic and places a priority on the health and welfare of those served by the developmental services system. If the state experiences another surge or until a vaccination is widely available, the Department must be prepared to work effectively on day to day operations, emergency planning, and continue to meet CMS requirements for waiver renewals, reporting, and other obligations that are prioritized by our federal partners.
- The Department is being asked to submit a 15% budget reduction for SFY22-23. It is unclear what the impact will be on the Department's ability to effectuate the COI CAP given potential changes in funding for technology, staffing, and other budget dependent factors. Also, the state currently has a hiring freeze and BDS staff that have retired are not being replaced.
- New Hampshire operates on a two year budget cycle, so any requests made outside of this budget cycle are difficult to fund. Assuming that the BDS IT modernization effort is not funded and/or the direct billing development is cut as part of the Department's budget reduction, BDS will not be able to continue to move forward on the direct billing component of the CAP as initially planned. BDS has submitted the IT modernization effort for the upcoming biennium. The budget will be approved in spring 2021.
- As NH navigates a challenging financial environment as a result of the pandemic, the loss in revenue is having an impact on what the Department can do over the remainder of the biennium and into SFY22-23. Effective September 2020, the Department is working with a national management consultant, Alvarez and Marsal, to consider how best to implement potential spending reductions and how we may be able to enhance federal revenue. The Department will also be considering budget efficiencies for SFY22-23. This process will be extensive and the consultant will make recommendations to the Department inclusive of technology implementation, case management, and other factors that could impact the current timeline and deliverables for the CAP. Recommendations from the consultant will initially be advanced by the end of the calendar year with the biennium budget not being passed until late spring 2021. The overall objective is to determine how we can still meet our mission with the fiscal challenges we face. There is concern that some recommendations made as part of this consulting engagement could result in changes to the Department's overall direction that could mean a change in the CAP direction and deliverables.
- BDS is conducting a second rate modeling exercise in November 2020 which will include provider agencies. This will offer an opportunity to further analyze revenue distribution across the state as rates are being developed in anticipation of direct billing and to insure the rates are appropriate to sustain and attract providers that will assure efficient, quality care within the different geographic areas within the state. The outcome of this exercise may require additional analysis and technical assistance from an external consultant. This will result in a delay in rate development which will in turn delay the direct bill implementation.

The state is committed to moving the COI CAP forward for the people and families it serves. The Department is making a concerted effort for implementation, but is in need of additional time to complete a successful implementation that preserves network adequacy and continuity in care for the people it serves during these unprecedented times. The state respectfully requests an approval for a compliance date of July 1, 2023 which will allow for a prudent approach to the developmental services system change as required by CMS. During this time period, the state will continue to work with the area agencies and providers to ensure that there is a separation of COI between service delivery and case management.

If you have any questions or need additional information, please do not hesitate to contact me at lori.shibinette@dhhs.nh.gov or (603) 271-9300. Deborah Scheetz is also available to answer any questions you might have at deborah.scheetz@dhhs.nh.us, or (603) 271-9459, or via remote office at (603) 714-5365. Thank you in advance for consideration of this request; I look forward to hearing from you.

Sincerely,


Lori A. Shibinette
Commissioner

cc: Deborah Scheetz, Director, Division of Long Terms Supports and Services
Henry Lipman, Medicaid Director
Melissa St. Cyr, Chief Legal Officer
Christopher Semidey, Health Insurance Specialist, CMS
Ciera Lucas, Health insurance Administrator, CMS
David Meacham, Director, HCBS Oversight and Administration
Ralph Lollar, Director, Division of Long Term Services and Supports
Melissa Harris, Deputy Director, Disabled and Elderly Health Programs Group